

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**CHINA MACHINERY ENGINEERING CORPORATION**

Applicant

-and-

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP  
and 2270613 ONTARIO INC.**

Respondents

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,  
c.C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c.B-3, as amended

**AFFIDAVIT OF YUEQING ZHANG  
(sworn June 14, 2018)**

**VOLUME 1 OF 3**

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2270613 Limited Partnership and 2270613 Ontario Inc.

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Court File No.: CV-18-591534-00CL

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**AFFIDAVIT OF YUEQING ZHANG  
(sworn June 14, 2018)**

**I, YUEQING ZHANG, of the City of Markham, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer and a director of the Respondent, 2284649 Ontario Inc. (the “**Debtor**”), and as such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.

2. This Affidavit is sworn in response to the Affidavit of Zhang Xiaofan (“**Xiaofan**”) sworn May 16, 2018 (the “**Xiaofan Affidavit**”) filed by China Machinery Engineering Corporation (“**CMEC**”) in connection with the hybrid trial (the “**Trial**”) to be conducted in accordance with the Order of Justice McEwen dated May 7, 2018 in these proceedings.

## I. Overview

3. The Debtor is a company in the business of design, construction, project financing and property management with its head office in Markham, Ontario.
4. CMEC is a construction and engineering company with its head office in Beijing, China. According to a Bloomberg research online report that I have reviewed, CMEC specializes in infrastructure-related construction including power, transportation, telecommunication, mining and resources exploitation projects. CMEC is also engaged, either directly or through its subsidiaries, in overseas and domestic concession investments in engineering contracting projects and associated financing business. Attached hereto as **Exhibit “A”** is a copy of the Bloomberg online research report.
5. The Debtor and CMEC entered into the following agreements:
  - (a) an engineering, procurement and construction contract dated January 22, 2013 (the “**EPC Contract**”), as amended pursuant to agreements dated July 30, 2013 (the “**1<sup>st</sup> Amendment**”), December 31, 2013 (the “**2<sup>nd</sup> Amendment**”), January 22, 2014 (the “**3<sup>rd</sup> Amendment**”) and pursuant to the Addendum to Technical Documents for Phillip Street Student Residence dated February 18, 2014 (the “**Technical Addendum**”). The EPC Contract, 1<sup>st</sup> Amendment, 2<sup>nd</sup> Amendment,

3<sup>rd</sup> Amendment and Technical Addendum are attached hereto as **Exhibit “B”**, **Exhibit “C”**, **Exhibit “D”**, **Exhibit “E”**, and **Exhibit “F”**, respectively;

- (b) a commitment letter with CMEC dated June 9, 2014 (the “**Commitment Letter**”) for a loan (the “**CMEC Loan**”) in the principal amount of U.S. \$61,380,000 plus interest accruing at a rate of 2.9748 percent per annum, as amended pursuant to an Amendment to Commitment dated May 27, 2015 (the “**First Commitment Amendment**”). The Commitment Letter and First Commitment Amendment are attached hereto as **Exhibit “G”** and **Exhibit “H”**, respectively; and
- (c) among other security, a Mortgage and Charge registered against the Real Property on June 10, 2017 as Instrument Number WR820800 in the maximum principal amount of U.S. \$61,380,000 (the “**Mortgage**”), as amended pursuant to an Amendment to Mortgage and Charge dated May 27, 2015 and registered as instrument number WR885069 on June 5, 2015 (the “**First Mortgage Amendment**”) and a second Amendment to Mortgage and Charge dated June 6, 2016 and registered as instrument number WR958443 on June 13, 2016 (the “**Second Mortgage Amendment**”). The Mortgage, the First Mortgage Amendment and the Second Mortgage Amendment are attached hereto as **Exhibit “I”**, **Exhibit “J”** and **Exhibit “K”**, respectively.

6. The Debtor asserts that it owes U.S. \$53,919,076 (the “**Undisputed Indebtedness**”) to CMEC as at May 8, 2018 rather than the U.S. \$71,929,604 as at May 8, 2018 (the “**CMEC**

**Claimed Amount")** claimed by CMEC. The Debtor's calculation of the Undisputed Indebtedness is attached hereto as **Exhibit "L"**.

7. The CMEC Claimed Amount being asserted as owing to CMEC is comprised of the following in the Xiaofan Affidavit:

- (a) U.S. \$60,663,335 in principal and interest under the CMEC Loan;
- (b) U.S. \$10,890,000 under the EPC Contract; and
- (c) U.S. \$376,269 in enforcement costs to December 31, 2017 and excluding enforcement costs since that date.

8. The Debtor disputes the CMEC Claimed Amount insofar as it includes certain amounts which the Debtor believes are not properly owing or otherwise enforceable. Specifically, the Debtor disputes that:

- (a) U.S. \$10,890,000 (the "**1<sup>st</sup> Disputed Amount**") is owing to CMEC under the EPC Contract; and
- (b) U.S. \$5,861,900 plus interest that has been accrued by CMEC on this amount (the "**2<sup>nd</sup> Disputed Amount**" and together with the 1<sup>st</sup> Disputed Amount, the "**Disputed Amounts**") was properly characterized as an advance under the CMEC Loan and therefore owing to CMEC.

9. For the reasons set out herein, the Debtor is of the view that the EPC Contract is not valid or enforceable and therefore disputes that any amounts are owing under the EPC Contract.

The result is that CMEC's claim is limited to the amount actually advanced by CMEC and properly owing under the CMEC Loan and Mortgage.

10. Furthermore, even in the event that the Court finds the EPC Contract is valid and enforceable, the Debtor asserts that the CMEC Claimed Amount is inflated by the amount of U.S. \$10,890,000 as it does not take into account the following:
  - (a) the Debtor and CMEC agreed that the original contract price of U.S. \$80,300,000 (the "**Original Contract Price**") was reduced by an amount of U.S. \$7,635,000 ("**Contract Price Reduction**") to U.S. \$72,665,000; due to a significant scope reduction agreed to before any advances were made by CMEC;
  - (b) the amount ultimately financed was U.S. \$55,518,100 rather than U.S. \$64,000,000 contemplated between the parties. Attached hereto as **Exhibit "M"** is a summary of the actual financing advanced to from CMEC through to the Debtor as described further below;
  - (c) the Debtor paid U.S. \$8,030,000 to CMEC as a deposit on January 23, 2014 (the "**Deposit**"), thereby reducing the balance owing under the EPC Contract from U.S. \$72,650,000 to U.S. \$64,635,000; and
  - (d) the Debtor paid U.S. \$7,400,000 to CMEC on September 9, 2016, which reduced the contract price from U.S. \$64,635,000 to U.S. \$57,235,000 (which is consistent with the U.S. \$57,718,631 amount set out in Exhibit "A" to the Xiaofan Affidavit when the interest of U.S. \$483,631 for the period between June 11, 2016 to September 9, 2016 is added in to the \$57,235,000 set out

therein). Attached hereto as **Exhibit “N”** is a summary of the *pro forma* invoices issued by CMEC prior to substantial completion of the project as described further below.

11. This is also consistent with the conduct between the parties. The conduct is evidenced by, among other things discussed herein, the *pro forma* invoices issued by CMEC and all payout statements and demands for payment issued by CMEC up until November 2017.
12. CMEC has improperly characterized the amount of the 2nd Disputed Amount (*i.e.*, U.S. \$5,861,900) as an “advance”. This amount was never advanced by CMEC, rather it was paid by the Debtor to CMEC and then back to the Debtor’s affiliate, Melloul-Blamey Building Corp. (“**MBBC**”). CMEC cannot add it to the amount of the CMEC Loan as this is effectively double counting.
13. The 2<sup>nd</sup> Disputed Amount represented a portion of the Deposit in the amount of U.S. \$8,030,000 paid by the Debtor pursuant to the EPC Contract. For the reasons set out herein, the EPC Contract was rendered inoperative and the amount of the Deposit (less the amount paid to Sinosure) should have been returned to the Debtor.

## **II. The Project**

14. In January 2011, following execution of the agreement of purchase and sale (the “**APA**”) for a four (4) acre parcel of real property municipally known as 256 Phillip Street, Waterloo, Ontario (the “**Real Property**”), the Debtor or one of its affiliates entered into numerous contracts related to the engineering and design of the Real Property. A summary

of the contracts entered into for the development of the Real Property is attached hereto as **Exhibit “O”**.

15. In July 2012, the Debtor purchased the Real Property as legal owner and nominee for 227 LP, which is owned 0.01% by its general partner, 227, and 99.9% by its limited partner.
16. Prior to purchasing the Real Property, the Debtor's affiliates had successfully completed two previous student residence projects, Preston House and Bridgeport House, in the Waterloo area. Melloul-Blamey Construction Inc. (“**MBCI**”) had served as general contractor on both of these projects.
17. The Debtor planned to develop the Real Property into four (4) student residence buildings given the Real Property's close proximity to three post-secondary institutions being Wilfrid Laurier, the University of Waterloo, and Conestoga College. The Real Property's prime location and size makes it a significant project in the City of Waterloo. During its development of the Real Property, the City of Waterloo has provided considerable support to the Debtor. The student residences were conceived as follows:
  - (a) Building A, to be known as Blair House, being a 20 story, 106 unit residence to be built on part of the Real Property that would become municipally known as 256 Phillip Street, Waterloo, Ontario (“**Blair House**” or “**Phase 1**”);
  - (b) Building B, to be known as Elora House, being a 20 story, 106 unit residence to be built on part of the Real Property that would become municipally known as 250 Phillip Street, Waterloo, Ontario (“**Elora House**” or “**Phase 4**”);

- (c) Building C, to be known as Fergus House, being a 21 story, 119 unit residence to be built on part of the Real Property that would become municipally known as 254 Phillip Street, Waterloo, Ontario (“**Fergus House**” or “**Phase 2**”); and
- (d) Building D, to be known as Hespeler House, being a 21 story, 120 unit residence to be built on part of the Real Property that would become municipally known 252 Phillip Street (“**Hespeler House**” or “**Phase 3**”).

(collectively, the “**Phillip Street Project**”). A copy of a sketch of the site and the site plan is attached hereto as **Exhibit “P”**.

- 18. The Debtor and MBCI had discussions regarding the Phillip Street Project from and after the purchase of the Real Property. In fact, as discussed below, a representative of MCBI travelled with me and other representatives of the Debtor to China to meet representatives of CMEC in early 2013.

### **III. Introduction of Debtor to CMEC**

- 19. In 2012, one of the Debtor’s consultants, Gary Xu, introduced the Debtor to CMEC as a possible source of both financing and construction services.
- 20. In January 2013, I travelled to China to meet with CMEC. I was accompanied by a group of the Debtor’s personnel including John Chemilian (Property Manager), Jennifer Xu (Project Director) (“**Xu**”), and Hao Zhang (Project Architect), as well as Michael McKnight from McKnight Charron Laurin Architects and Jeff Heimpel, Vice President of Business Development, from MBCI. Attached hereto as **Exhibit “Q”** is a copy of an email

from Xiaofan dated January 16, 2013 enclosing an itinerary for the period between January 17 and 22, 2013.

21. Despite my understanding that CMEC was a possible source of both financing and construction services, in the course of the meetings between CMEC and the Debtor in China in January 2013, CMEC advised the Debtor that its mandate from the Chinese government did not allow it to act as a lender alone.
22. CMEC proposed that it would participate in the financing of Blair House with a view to earning its profit upon the completion of the project. CMEC requested, and the Debtor agreed, that CMEC's profits be paid in the form of fees payable to it as general contractor. CMEC agreed that it would complete the Phillip Street Project for the amount of U.S. \$80.3 million. CMEC's anticipated profit was approximately U.S. \$16,000,000, subject to CMEC bringing in U.S. \$64,000,000 for the financing of Blair House. The amount of financing was based on the budget at the time for the construction of Blair House and an underground parking garage (of 474 parking stalls) to be used by the entire Philip Street Project. Attached hereto as **Exhibit "R"** is an email from Shi Jianto of CMEC to Xu of the Debtor dated January 21, 2013, with an attachment titled "Price Sheet A (draft)". The attached Exhibit indicates how CMEC calculated the quantum of the EPC Contract.
23. The financing period under the EPC Contract was to be for a total of 48 months, with the first 24 months being the period for advances of the financing to allow for the completion of construction and the second 24 months thereafter being for repayment. Repayment was to occur incrementally on a monthly basis commencing 24 months after the date of the first advance under the EPC Contract and during this time the total amount of U.S. \$80,300,000

was to be fully paid by the Debtor to CMEC. This is set out in the payment schedule to the EPC Contract discussed below.

24. As a state-owned company, I understand that CMEC follows the mandate of the Chinese government. I was advised by representatives of CMEC including, Xiaofan and Jiantao Shi (“**Shi**”), that it is mandatory for CMEC to obtain one or more insurance policies from China Export & Credit Insurance Corporation (“**Sinosure**”) as a guarantor when participating in overseas projects. I understand that Sinosure is a state-funded insurance company established and supported by the Chinese government to promote China's foreign economic and trade development and cooperation. Based on my discussions with representatives of CMEC, it is my understanding that once this insurance was put in place, in the event that a debtor is unable to repay CMEC, then Sinosure will repay CMEC for up to 90% of the contract value.
25. The premiums to be paid for the Sinosure insurance were to be included in the Original Contract Price.

#### **IV. The Construction Contracts**

26. The Debtor and CMEC entered into the EPC Contract on January 22, 2013. As set out above, the Original Contract Price was U.S. \$80,300,000.
27. The EPC Contract was subsequently amended by the 1<sup>st</sup> Amendment on July 30, 2013, by the 2<sup>nd</sup> Amendment on December 31, 2013, by the 3<sup>rd</sup> Amendment on January 22, 2014 and by the Technical Addendum on February 18, 2014.

28. As part of 2<sup>nd</sup> Amendment, China Everbest Development International Limited (“**China Everbest**” and collectively with CMEC, the “**Consortium**”), a Hong Kong based subsidiary of CMEC, became a party to the EPC Contract by joining CMEC to form the “Consortium” (as defined in the 2<sup>nd</sup> Amendment). Consortium Article A-11 states that CMEC shall be responsible for financing, and China Everbest shall be responsible for design, procurement, construction, completion of the work and remedy of any defects in the work and any other obligation of the Contractor.
29. During the period between the execution of the EPC Contract on January 22, 2013 and the date of the 3<sup>rd</sup> Amendment on January 22, 2014, the EPC Contract did not come into force pursuant to its terms.
30. Immediately prior to executing the 3<sup>rd</sup> Amendment, Xiaofan emailed me on January 22, 2014, advising that CMEC was ready to receive the Deposit and enclosed a letter from CMEC to the Debtor dated January 22, 2014 wherein CMEC confirmed that the balance of the Deposit (less payments to MBBC and Sinosure) would be returned to the Debtor if the CMEC fails to commence the work. The reason this stated less payments to MBBC was because the amount paid to MBBC was effectively paid to the Debtor (*i.e.*, such that this money was already returned to the Debtor). Attached hereto as **Exhibit “S”** is a copy of the email from Xiaofan to me dated January 22, 2014 and the enclosed letter of the same date.
31. The 3<sup>rd</sup> Amendment annexes a Deferred Payment Schedule that clearly sets out the proposed financing with advances to be made within the first 24 months and repayment in the following 48 months. By its terms, the EPC Contract did not become effective until

the payment of the Deposit in the amount of U.S. \$8,030,000 in January 2014, discussed below. The result being that the final repayment under the EPC Contract terms would be due 48 months later, being January 2018.

**V. Concerns Regarding ability of CMEC to do Business in Ontario**

32. Subsequently, the Debtor had a number of concerns with respect to CMEC's and China Everbest's ability to carry out its role as general contractor pursuant to the EPC Contract, including the following:
  - (a) the Consortium was unwilling or unable to incorporate a local company with a harmonized sales tax ("HST") number and this caused the Debtor and its accountants a number of concerns and also prevented the Debtor from assigning contracts to CMEC, thereby jeopardizing the success of the project; and
  - (b) it was my belief at the time, and still is today, that neither CMEC nor China Everbest had legal authority to do business or act as a builder in Ontario at the relevant time.
33. Accordingly, in the course of preparing this Affidavit, my counsel, Miller Thomson LLP, undertook searches relating to CMEC and China Everbest to determine if any of these entities had been either:
  - (a) licenced under the *Extra-Provincial Corporations Act*, R.S.O 1990, c. E.27, as amended (the "***Extra-Provincial Corporations Act***"), to carry on business in Ontario; or

- (b) registered as “builders” with the Registrar under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c.O.31, as amended (the “**ONHWP**A”).
34. Based on the searches obtained by Miller Thomson LLP, CMEC is a corporation incorporated under the laws of a jurisdiction outside of Canada and is not and has never been licenced under the *Extra-Provincial Corporations Act* to carry on business in Ontario. Attached hereto as **Exhibit “T”** is a copy of the search results produced by the Ontario Ministry of Government Services dated May 16, 2018 in respect of the name “China Machinery Engineering Corporation” and the NUANS search showing that there is no corporation incorporated in Canada bearing the name of CMEC.
35. Based on the searches obtained by Miller Thomson LLP, China Everbest is a corporation incorporated under the laws of a jurisdiction outside of Canada and is not and has never been licenced under the *Extra-Provincial Corporations Act*. Attached hereto as **Exhibit “U”** is a copy of the search results produced by the Ontario Ministry of Government Services dated May 16, 2018 in respect of the name “China Everbest Development International Limited” and the NUANS search showing that there is no corporation incorporated in Canada bearing the name of China Everbest.
36. In addition, based on the searches obtained by Miller Thomson LLP, neither CMEC nor China Everbest were ever registered as “builders” with the Registrar under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c.O.31, as amended (the “**ONHWP**A”). Attached hereto as **Exhibit “V”** are copies of the search results dated June 1, 2018 against the names “China Machinery Engineering Corporation” and “China Everbest Development International Limited” under the *ONHWP*A.

37. Certain of these concerns regarding the Consortium's ability to perform the EPC Contract in Canada were communicated to CMEC. One example of a concern being raised with CMEC is in an email dated January 15, 2014 from Xu to Xiaofan, which is attached hereto as **Exhibit "W"**. In her email, Xu advises Xiaofan that the Debtor will look into the HST situation as this would be required for MBBC to issue invoices.
38. I am advised by Xu and do verily believe that she was referring to the Consortium's inability to set up an HST number.
39. By the fall of 2014, well into the restructured arrangements discussed below, I again pressed CMEC regarding conducting its business in Canada. Consequently, by email dated October 11, 2014, I again asked Xiaofan of CMEC to make the necessary arrangements for the corporation to be registered as soon as possible. Attached hereto as **Exhibit "X"** is a copy of the email trail between Maggie Liu ("Liu"), controller of the Debtor, myself and Xiaofan between October 10, 2014 and October 14, 2014.

## **VI. Dual Paths and Need to Restructure Contractor Arrangements**

40. Despite execution of the EPC Contract by the parties, it had not become effective and there was no significant progress in respect of the Phillip Street Project for almost a year thereafter as between CMEC and the Debtor.
41. The original plan was for CMEC to start construction in January 2013, and for Blair House to be ready by September 2014 in order to accommodate students for the 2014/15 academic year. Due to CMEC's failure to obtain internal approvals, the EPC Contract did not

become effective and the Phillip Street Project languished, resulting in the Debtor losing the ability to accommodate students for the 2014/15 year and collect the resulting rents.

42. In light of the lack of progress with CMEC, the Debtor continued its practice of directly contracting for engineering, procurement and pre-construction services with various service providers as are identified in the summary of the contracts previously attached hereto as **Exhibit “O”**. Copies of certain of these agreements along with the relevant invoices are attached hereto as **Exhibit “Y”**.
43. After months of no real progress with CMEC on the EPC Contract notwithstanding following up on several occasions with no substantive responses, on January 17, 2014, the Debtor entered into a Cost Plus Contract with MBCI (the “**CPC Contract**”). The CPC Contract established MBCI as the construction manager in respect of the construction of Blair House. A copy of the CPC Contract is attached hereto as **Exhibit “Z”**.
44. The thinking at the time of entering into the CPC Contract with MBCI was that if CMEC decided to proceed under the EPC Contract, the CPC Contract would be assigned to allow MBCI to be a subcontractor to construct Blair House. Otherwise, the Debtor could seek alternative financing to complete Blair House directly through MBCI. The Debtor had decided that it had to move forward with the construction of Blair House in January 2014 so the building would be completed by September 2015 to accommodate students for 2015 school year.
45. Shortly after executing the CPC Contract with MBCI, on January 22, 2014, China Everbest and MBBC, entered into a contract whereby MBBC was appointed as the subcontractor to

construct Blair House (the “**MBBC Subcontract**”). MBBC is a company owned 50% percent by a Debtor affiliate and 50% by MBCI. The MBBC Subcontract provided for a contract price of U.S. \$61,380,000 and provided for a deposit to MBBC in the amount of U.S. \$5,861,900. A copy of the MBBC Subcontract is attached hereto as **Exhibit “AA”**.

46. The expectation of the Debtor at the time of entering into the MBBC Subcontract was that:
  - (a) MBBC would take an assignment of the CPC Contract entered into with MBCI; (b) thereafter MBBC would be the project management and (c) MBCI would be the subcontractor that would build Blair House once CMEC properly established its business in Canada.
47. Contemporaneously, on January 22, 2014, CMEC and the Debtor entered into the 3<sup>rd</sup> Amendment to the EPC Contract discussed above. In addition, by letter dated January 22, 2014, CMEC directed that the payment of the Deposit be made by the Debtor as follows:
  - (a) an amount of U.S. \$3,831,900 to be paid to China Everbest;
  - (b) an amount of \$2,200,000 to be paid to China Everbest; and
  - (c) an amount of U.S. \$2,168,100 to be paid to CMEC.

Attached hereto as **Exhibit “BB”** is a letter from Xiaofan of CMEC dated January 22, 2014 directing the payment of the Deposit. The amounts paid to China Everbest pursuant to CMEC's direction equal U.S. \$5,861,900, which amount was then funded to MBBC as discussed below. The amount paid to CMEC in the amount of U.S. \$2,168,100 was used by CMEC to pay the Sinosure premiums.

48. On January 23, 2014, the Debtor paid the Deposit in accordance with the January 22, 2014 directing same. Bank statements evidencing the payment of the Deposit by the Debtor on January 23, 2014 are attached hereto as **Exhibit “CC”**.
49. Pursuant to a Notice to Proceed dated January 22, 2014, the Debtor advised MBCI that work on the Phillip Street Project was scheduled to commence on or before February 1, 2014. Attached hereto as **Exhibit “DD”** is a copy of the Notice to Proceed from the Debtor to MBCI dated January 22, 2014 (the “**MBCI Notice to Proceed**”). As set out above, the Debtor’s intention was that the CPC Contract would be assigned once CMEC established itself in Canada.
50. Pursuant to a Notice to Proceed dated January 28, 2014, the Debtor advised the Consortium that work on the Phillip Street Project was scheduled to commence on or before January 30, 2014. Attached hereto as **Exhibit “EE”** is a copy of the Notice to Proceed from the Debtor to the Consortium dated January 28, 2014.
51. Pursuant to a Notice to Proceed dated January 30, 2014, China Everbest advised MBBC that work on the Phillip Street Project was scheduled to commence on or before January 30, 2014. Attached hereto as **Exhibit “FF”** is a copy of the Notice to Proceed from China Everbest to MBBC dated January 30, 2014.
52. However, notwithstanding the Notices to Proceed described at paragraphs 50 and 51 above, I understand that neither CMEC nor China Everbest ever had the legal authority to act as a builder or do business in Ontario during the relevant periods. Due to our concerns at the time, the CPC Contract was never assigned to MBBC, and none of CMEC, China Everbest

or MBBC had any direct involvement in the actual construction of the Phillip Street Project. Rather, the construction was performed by MBCI, a well-established Ontario construction company, under the CPC Contract between the Debtor and MBCI and CMEC financed the project, as further discussed below.

## **VII. Technical Addendum and Change of Scope of EPC Contract**

53. Immediately after paying the Deposit, the Technical Addendum dated February 18, 2014 was executed. Pursuant to the Technical Addendum, the parties agreed that the scope of the Blair House project would be substantially reduced.
54. The Phillip Street Project plan originally contemplated a single underground parking lot for all four of the buildings, with 474 parking spots. As set out in the price table provided by Xiaofan to Xu by email dated January 16, 2014 (copies of which are attached hereto as **Exhibit “GG”**), CMEC estimated the cost of completion of such a garage at U.S. \$24,260,000.
55. The Technical Addendum reduced the number of parking spots to 134. As a result of the changes contemplated in the Technical Addendum the parties agreed that the Original Contract Price would be reduced by an amount of U.S. \$7,635,000, being the Contract Price Reduction. I am advised by Xu, and do verily believe, that Xiaofan confirmed this reduction in the contract price during a telephone call with Xu on January 15, 2014 prior to the execution of the Technical Amendment. Xu summarized this discussion in an email to Xiaofan and others dated January 15, 2014, a copy of which was previously attached

hereto as **Exhibit “W”**. Further evidence relating to the agreement to reduce the Original Contract Price is provided below in this Affidavit.

56. On February 18, 2014, the Consortium issued a letter to the Debtor annexing a Revised Price Table to the EPC Contract (the “**Revised Price Table**”). The Revised Price Table identifies the Contract Price Reduction of \$7,635,000 as a “Provisional Sum”. A copy of the letter dated February 14, 2018 annexing the Revised Price Table is attached hereto as **Exhibit “HH”**.
57. After the Technical Addendum was agreed to between the parties, during construction the parking spots were further reduced to 89.

### **VIII. The CMEC Loan and Flow of Funds**

58. It was always agreed between CMEC and the Debtor that CMEC would provide financing towards the construction of Blair House. It was understood by the parties that the financing was pursuant to the EPC Contract payment schedule and that CMEC’s profit was to be derived from the amount paid under the EPC Contract and not specifically from financing, as CMEC mandate was that of a contractor and not a lender.
59. Pursuant to the Revised Deferred Payment Schedule attached to the 3<sup>rd</sup> Amendment of the EPC Contract, CMEC was supposed to issue its first progressive payment under the EPC Contract in the fourth month after the EPC Contract became effective, which should have been in May 2014.

60. As stated above, the relationship between the Debtor and CMEC was fundamentally reconstructed due to the Consortium's inability and failure to perform the EPC Contract. After the Deposit was paid by the Debtor, CMEC began making demands for, among other things, a mortgage over the Real Property. As noted above, CMEC had previously advised the Debtor that CMEC was not permitted to act as a lender. Since the Debtor had issued the MBCI Notice to Proceed and the construction had begun, the Debtor had no choice but to accept CMEC's terms.
61. On June 9, 2014, the Debtor entered into the Commitment Letter with CMEC for the CMEC Loan in the principal amount of U.S. \$61,380,000 plus interest accruing at a rate of 2.9748 percent per annum secured by, among other security, the Mortgage registered against the Real Property in the maximum principal amount of U.S. \$61,380,000.
62. I note that the Commitment Letter incorporated a significant change to the repayment schedule of the amounts to be advanced by CMEC, taking it from a 48 month term for repayment with repayment occurring over the latter 24 month period to a 24 month term with repayment being at the end of the 24 month term, thereby substantially compressing the same.
63. At the time of executing the Commitment Letter and the Mortgage, the Debtor had advanced U.S. \$8,030,000 to CMEC and MBBC had only received U.S. \$5,861,900 back from this Deposit. Therefore, if the Debtor did not agree to CMEC's demands, it would not receive its financing notwithstanding that MBCI had commenced construction and it would have an economic loss of U.S. \$2,168,100 paid to CMEC, which was used to pay Sinosure insurance premium.

64. Moreover, at the time of executing the Commitment Letter and the Mortgage, Xiaofan explained to me that CMEC would need to seek consent from Sinosure for the Real Property to be severed and that it would be easier to obtain this consent once the building was completed. Therefore, the Mortgage could be amended at a later date to provide for severance. The Debtor's focus was on the successful completion of Blair House. I was assured by Xiaofan that it would be easy to negotiate with CMEC as they are a state-owned company.
65. At the time, the Debtor did not agree that the U.S. \$5,861,900 payment to MBBC from the Deposit shown on Schedule B to the Commitment Letter was a true advance since it was a flow through of the Debtor's own money. However, the Debtor was concerned that if the Mortgage was registered in the amount of U.S. \$55,518,100, then CMEC would only advance U.S. \$49,656,200, which would jeopardize the construction of Blair House. In order to avoid the potential of substantial delay to the project and economic loss, the Debtor agreed to register the Mortgage in the principal amount of U.S. \$61,380,000.
66. After the entering into of the Commitment Letter and the Mortgage, during the course of construction of Blair House, the Debtor periodically requested funds from CMEC. CMEC would then advance funds to the Debtor under the CMEC Loan, by delivering such funds directly to MBBC. Copies of the requests for advance (with the exception of two requests for advance that the Debtor was unable to locate, one for U.S. \$400,000 and one for U.S. \$1,600,000) are attached hereto as **Exhibit "II"**. MBBC would then flow the funds to the Debtor and the Debtor would pay MBCI in respect of the invoices it issued under the CPC Contract as MBCI completed the construction of Phase 1 of the Phillip Street Project and

paid its subtrades. To confirm, none of CMEC, China Everbest or MBBC had contracts signed with any subtrade that worked on Blair House as they were all retained by MBCI.

67. Notwithstanding the facts set out in paragraph 66 above, at the request of CMEC, during the construction of Phase 1 between May 15, 2014 and September 30, 2015, MBBC issued 17 *pro forma* invoices to China Everbest totalling \$61,380,000 (collectively, the “**MBBC Pro Forma Invoices**”). At the time we understood this was a requirement for CMEC from Sinosure and was required to allow CMEC to continue to finance the project. Copies of the MBBC *Pro Forma* Invoices are attached hereto as **Exhibit “JJ”**.
68. Similarly, notwithstanding the facts set out in paragraph 66 above, during the construction of Phase 1 between May 30, 2014 and September 30, 2015, the Consortium issued 17 *pro forma* invoices to the Debtor totalling \$72,665,000 with respect to construction while the construction was managed by MBCI (collectively, the “**17 Consortium Pro Forma Invoices**”). Copies of the 17 Consortium *Pro Forma* Invoices are attached hereto as **Exhibit “KK”**.
69. Neither MBBC nor the Consortium ever issued actual invoices. The only party that issued actual invoices relating to the construction of Blair House was MBCI to the Debtor and the Debtor paid these invoices from funding advanced by CMEC.
70. The Commitment Letter and the Mortgage were amended in or about May 2015 pursuant to the First Commitment Amendment and the First Mortgage Amendment, respectively, to increase the interest rate and to replace the funding schedule attached to the Commitment

Letter, which, among other things, sets out a schedule of repayment of advances, showing the total amount owing at maturity as U.S. \$64,635,000.

71. I believe that the Mortgage and First Commitment Amendment are evidence that there was never supposed to be profit paid under the EPC Contract and also additional interest under the CMEC Loan and also confirm that the parties had agreed to the Contract Price Reduction. In particular, the interest rate was calculated with reference to the amount to be earned by CMEC under the EPC Contract. This is demonstrated by the calculation of the total principal and interest payment to be repaid to CMEC under the CMEC Loan of U.S. \$64,635,000, which was actually determined based upon taking the Original Contract Price of \$80,300,000 and deducting the Contract Price Reduction of \$7,635,000 and the Deposit of \$8,030,000 paid by the Debtor to result in the same return to CMEC.

#### **IX. Certificates of Substantial Performance**

72. All steps for substantial completion of Blair House were performed by MBCI and it issued the Certificate of Substantial Performance dated November 16, 2015 and Certificate of Publication dated November 20, 2015 (together, the “**MBCI Certificates**”), copies of which are attached hereto as **Exhibit “LL”**. The MBCI Certificates confirm that construction was substantially complete as of November 16, 2015.
73. I note that, notwithstanding the above, in or about January 2016, CMEC demanded that the Debtor execute a second Certificate of Substantial Performance. CMEC had previously made several requests for same. In or about January 2016 a second Certificate was prepared by CMEC and signed by the Debtor on January 31, 2016 (the “**CMEC**

**Certificate**", a copy of which, together with the cover letter dated November 16, 2015, is attached hereto as **Exhibit "MM"**).

74. While the cover letter enclosing the CMEC Certificate was dated November 16, 2015, it was not delivered to the Debtor until January 2016. As discussed below, it was not executed by the Debtor until approximately March 2016 at the insistence of CMEC and as a condition to CMEC agreeing to discussions relating to the severance of Phase 2. I am not aware of and do not believe that the CMEC Certificate was ever published.

#### **X. Refinancing Issues and Severance of Fergus House**

75. After the completion of Blair House, the Debtor started working towards the development of Fergus House, in accordance with the terms of the site plan agreement, which provides that the Debtor cannot suspend activities at the site for more than 90 days from completion of Blair House.
76. The Mortgage did not provide for severance of the individual phases of the Phillip Street Project upon completion, or discharge of the Mortgage as it related to an individual parcel of the Real Property upon its severance. As described above, the indebtedness owing to CMEC in connection with Phase 1 – Blair House was secured by the Mortgage over the entire four-acre parcel of the Real Property as the Real Property had not been severed when the Mortgage was put in place.
77. As a result, the Debtor was unable to secure construction financing for Phase 2 – Fergus House without severance of the relevant parcel and discharge of the Mortgage over same.

78. As early as the fall of 2015, the Debtor started making proposals to CMEC with a view to refinancing Blair House. None of these proposals were acceptable to CMEC. Accordingly, the Debtor attempted to negotiate with CMEC towards a solution that would allow for the severance of Fergus House so as to facilitate construction financing from a new lender.
79. By early 2016, the Debtor had already invested a substantial amount into the development of Phase 2 – Fergus House.
80. As set out above, in January 2016 CMEC sent the CMEC Certificate to the Debtor for execution to evidence substantial completion of Blair House. In light of my view that CMEC had neither performed the construction work nor otherwise fulfilled the EPC Contract, the Debtor had not issued a Certificate of Substantial Performance in CMEC's name. However, CMEC made the execution of the CMEC Certificate a condition to continued discussions regarding the severance of Fergus House. As a result, in or about March 2016, the Debtor reluctantly executed the CMEC Certificate and delivered it to CMEC.
81. The Debtor and CMEC engaged in protracted discussions regarding the severance of Fergus House. In or about April 21, 2016, the parties agreed in principle to the terms of a severance and a partial discharge of the Mortgage over the Real Property where Phase 2 was being developed. Contemporaneous correspondence from CMEC to the Debtor sets out the terms agreed to and confirms that the parties contemplated a payment by the Debtor to CMEC in the amount of approximately U.S. \$7 million as consideration for the severance and discharge of the Mortgage. Attached hereto as **Exhibit "NN"** is a copy of

a letter from CMEC to the Debtor dated April 21, 2016 outlining the proposed terms of the severance and partial discharge.

82. On June 6, 2016, after negotiations relating to the severance of Phase 2, the Debtor and CMEC entered into the Second Mortgage Amendment, amending the Mortgage to, among other things, add a provision relating to severance and partial discharges.
83. On June 14, 2016, CMEC delivered a Notice of Default to the Debtor. However, in light of the discussions taking place between the parties, CMEC withdrew the Notice of Default by letter on the same date. Copies of the Notice of Default and letter withdrawing same are attached hereto as **Exhibit “OO”**.
84. In reliance upon the agreement discussed in paragraph 81 above, the Debtor continued to self-finance construction of Fergus House through the summer of 2016, and by September 2016 the Debtor had invested approximately U.S. \$28 million into that component of the Phillip Street Project.
85. The severance transaction was concluded on September 9, 2016 with the Debtor paying CMEC U.S. \$7,400,000 and the funds were applied by CMEC as follows:
  - (a) U.S. \$3,250,449 to outstanding interest to date on the amount CMEC claims was owing under the Mortgage; and
  - (b) U.S. \$4,148,550 to repay principal outstanding under the Mortgage.
86. Following completion of the severance and partial discharge transaction described above, Fergus House was transferred to an affiliate of the Debtor, which then secured replacement

financing with a third-party lender. Construction of Fergus House was then completed and the building is now fully occupied. Fergus House's owner is not indebted to CMEC and is not a party in these Receivership Proceedings.

## **XI. Facts Leading to Receivership Proceedings**

87. On April 20, 2017, CMEC delivered a Notice of Default to the Debtor. Attached hereto as **Exhibit "PP"** is a copy of the Notice of Default dated April 20, 2017.
88. The Debtor attempted to negotiate terms with CMEC regarding the repayment of its indebtedness without success. At the same time, the Debtor sought to arrange financing that would be sufficient to pay the full amount owing to CMEC.
89. The Debtor requested a payout statement from CMEC. The Debtor received a payout statement dated June 1, 2017 (the "**June 2017 Payout Statement**"). In the June 2017 Payout Statement, CMEC claimed that an amount of U.S. \$59,028,866 was owing as at June 9, 2017. The June 2017 Payout Statement made no reference to the 1<sup>st</sup> Disputed Amount being owing to CMEC. A copy of the June 2017 Payout Statement is attached hereto as **Exhibit "QQ"**.
90. Based on the June 2017 Payout Statement, the Debtor arranged a commitment for financing through a Canadian financial institution and was in the process of seeking additional financing from one of the Debtor's shareholders that combined would have been be sufficient to pay the full amount the Debtor understood was claimed to be owing to CMEC, being U.S. \$59,038,263 inclusive of interest to June 11, 2017 plus interest and costs thereafter.

91. As a result of these efforts, I asked the Debtor's corporate counsel, Fogler Rubinoff LLP, to request an up to date payout statement from CMEC on or about the end of October, 2016.
92. On November 6, 2017, CMEC delivered a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Notice**", respectively), wherein CMEC claimed the following:
  - (a) U.S. \$59,038,263 inclusive of interest to June 11, 2017 but excluding other accrued interest, costs and other expenses owing under the Commitment Letter, as amended, plus
  - (b) an additional secured amount of U.S. \$10,890,000 excluding interest, costs and other expenses, owing under the EPC Contract, as amended.

A copy of the letter from counsel for CMEC and the BIA Notice is attached hereto as **Exhibit "RR"**.

93. On November 7, 2017, CMEC issued a payout statement (the "**November 2017 Payout Statement**") to the Debtor claiming the following amounts as at November 10, 2017:
  - (a) U.S. \$59,784,736 inclusive of interest to November 10, 2017; and
  - (b) U.S. \$10,890,000 plus interest, costs and other expenses owing under the EPC Contract as secured by the Mortgage.

A copy of the November 2017 Payout Statement is attached hereto as **Exhibit "SS"**.

94. The amount demanded by CMEC pursuant to the BIA Notice and the November 2017 Payout Statement represented a marked and substantial increase from the amount that the Debtor had understood to be owing to CMEC, based on numerous prior communications between the parties as discussed herein including prior payout statements from CMEC.
95. In addition, the last of the 17 Consortium *Pro Forma* Invoices (previously attached to this Affidavit as **Exhibit “KK”**), issued by CMEC on September 30, 2015, indicated that as of that date no further amounts were owing in respect of the construction of Blair House.
96. After receiving the BIA Notice and the November 17 Payout Statement, I tried to determine how CMEC was now claiming an additional U.S. \$10,890,000, which it had never claimed as owing before. In doing so, I realized that on October 27, 2017, CMEC had emailed me and Lui enclosing an 18th *pro forma* invoice and related documents claiming an additional U.S. \$7,635,000 (collectively, the “**18th Pro Forma Invoice**”). On the 18th *Pro Forma* Invoice it states “Provisional Sum (Due to the late repayment).” As set out above, Phase 1’s substantial completion occurred in November 2015 and there are no amounts owing with respect to the construction of Phase 1. No work was undertaken relating to the amount claimed under the 18<sup>th</sup> *Pro Forma* Invoice. A copy of the email dated October 27, 2017 and the 18th *Pro Forma* Invoice is attached hereto as **Exhibit “TT”**.
97. To my knowledge, prior to the issuance of the BIA Notice and the 18th *Pro Forma* Invoice, CMEC had never asserted that there was an additional secured amount of U.S. \$10,890,000 (excluding interest, costs and other expenses) owing to it.

98. I believe that adding an addition the 1<sup>st</sup> Disputed Amount to the CMEC Claimed Amount, made it substantially more difficult for the Debtor to raise the financing required to repay CMEC.
99. Thereafter, in January 2018, CMEC and the Debtor reached a conditional agreement. Unfortunately, as a result of circumstances outside of the Debtor's control, a condition precedent to the agreement could not be fulfilled. As a result, these Receivership Proceedings were commenced on February 6, 2018.

## **XII. Disputed Amounts Not Properly Owing to CMEC**

100. As set out above, the Debtor disputes CMEC's claim to the Disputed Amounts on the following basis: (a) the unenforceability and invalidity of the EPC Contract; (b) the agreed-upon reduction in scope of the Phillip Street Project and CMEC *Pro Forma* Invoices demonstrate the 1<sup>st</sup> Disputed Amount is not owing; and (c) CMEC is double-counting of the 2<sup>nd</sup> Disputed Amount by including it as an advance under the CMEC Loan.

### **A. 1<sup>st</sup> Disputed Amount**

101. The Debtor disputes CMEC's claim to the 1<sup>st</sup> Disputed Amount of U.S. \$10,890,000, which CMEC claims is owing under the EPC Contract.
102. CMEC has calculated the 1<sup>st</sup> Disputed Amount by subtracting the amount paid to MBBC under the MBBC Subcontract (*i.e.*, U.S. \$61,380,000) and the amount of the Deposit (*i.e.*, U.S. \$8,030,000) from the Original Contract Price of U.S. \$80,300,000. In other words, CMEC's claim to the 1<sup>st</sup> Disputed Amount is premised on CMEC's claim that it is entitled to payment of the Original Contract Price. In addition, in calculating this amount, they

completely ignore the U.S. \$7,400,000 paid by the Debtor to CMEC in September 2016. However, I do not believe that CMEC is entitled to this amount.

**(i) EPC Contract Not Performed by Consortium**

103. Subsequent to the execution of the EPC Contract, both CMEC's role and the scope of the Phillip Street Project changed substantially such that the Original Contract Price was no longer applicable. The reduction to the Original Contract Price was in fact agreed to by CMEC.
104. As set out above, while it may have originally been the intention of the parties that CMEC act as contractor on the Phillip Street Project, through no fault of the Debtor (or its affiliates), neither CMEC nor the Consortium were qualified to do so. Neither CMEC nor China Everbest were registered to do business in Ontario or otherwise perform their respective obligations under the EPC Contract. To the best of my knowledge, neither CMEC nor China Everbest made any significant efforts to rectify this.
105. As such, CMEC's role was relegated to that of project financier, and the EPC Contract was effectively displaced and replaced by the new construction arrangement. China Everbest had no significant role in the actual relationship between the parties in connection with construction or financing of Blair House.

**(ii) Contract Price Reduction**

106. Even if the EPC Contract remained valid and enforceable, the parties had agreed that the Original Contract Price payable thereunder would be reduced by an amount of U.S. \$7,635,000 to account for the substantial reduction in the scope of the Phillip Street Project.

107. Specifically, pursuant to the Technical Addendum, the parties agreed that the scope of the Phillip Street Project would be substantially reduced. As set out above, the Phillip Street Project plan originally contemplated a single underground parking lot for all four of the buildings, with 474 parking spots, which was estimated to cost U.S. \$24,260,000 to complete.
108. The changes contemplated in the Technical Addendum were such that the number of parking spots would be reduced to 134. Thereafter, during construction it was reduced to 89.
109. The reduction in project scope resulted in an agreement between the parties to a reduction to the Original Contract Price by U.S. \$7,635,000. This Contract Price Reduction had been agreed to approximately four years prior to the delivery of the BIA Notice. CMEC confirmed the reduction in scope and corresponding Contract Price Reduction on multiple occasions during the course of the relationship between the parties, including the following:
  - (a) I am advised by Xu, a Project Director with the Debtor, and do verily believe that the reduction in the contract price was confirmed by Xiaofan during a telephone discussion on or about January 15, 2014. Xu summarized this discussion in an email to Xiaofan and others dated January 15, 2014, a copy of which was previously attached hereto as **Exhibit “W”**;
  - (b) The reduction in project scope and project cost was again confirmed in an email from Xu to Xiaofan and others dated January 16, 2014, a copy of which is attached hereto as **Exhibit “UU”**;

- (c) An email dated November 20, 2015 from Xiaofan to Jennifer Xu included an attachment referencing a reduction of the Original Contract Price, from U.S. \$80,300,000 to U.S. \$72,625,000. A copy of such email and attachment are attached hereto as **Exhibit “VV”**; and
- (d) An email dated April 27, 2016 sent by Mi Chuan (a CMEC employee) to Liu includes a draft letter prepared by CMEC setting out the reduction to the Contract Price. A copy of such email and draft letter are attached hereto as **Exhibit “WW”**.

**(iii) CMEC Confirmed No Further Amounts Owing**

- 110. Despite the fact the construction was deemed substantially completed as of November 20, 2015, prior to November 2017, CMEC had never demanded payment of the amount of the agreed-upon reduction described above.
- 111. Neither CMEC nor China Everbest commenced any legal proceeding for recovery of the CMEC Claimed Amount prior to the commencement of these Receivership Proceedings. Attached hereto as **Exhibit “XX”** is a copy of a litigation search dated June 1, 2018 in respect of the previous name of the Debtor.
- 112. By letter to CMEC and China Everbest dated April 27, 2016 (the “**Contract Price Letter**”), the Debtor confirmed its understanding that, after taking into account (i) the deposit in the amount of U.S. \$8,030,000, and (ii) the reduction in the Original Contract Price under the EPC Contract (as amended) in the amount of U.S. \$7,635,000 resulting from the reduction in the work scope and amended payment schedule, the balance of the

Contract Price had been reduced to U.S. \$64,635,000. This letter was never disputed by CMEC. A copy of the Contract Price Letter is attached hereto as **Exhibit “YY”**.

113. In correspondence dated December 9, 2016 from Xiaofan of CMEC to me, CMEC referenced only an amount of U.S. \$57,718,631 in principal outstanding as of September 9, 2016. CMEC’s correspondence did not reference any additional amounts outstanding under the EPC Contract. A copy of the correspondence dated December 9, 2016 is attached hereto as **Exhibit “ZZ”**.

**B. 2<sup>nd</sup> Disputed Amount**

114. The Debtor disputes CMEC’s claim to the 2<sup>nd</sup> Disputed Amount in the amount of U.S. \$5,861,900, which I believe CMEC has improperly characterized as an “advance”. This amount was never in fact advanced by CMEC. In addition, CMEC has accrued interest in respect of this amount.
115. Pursuant to the EPC Contract, the Debtor agreed to pay to CMEC the Deposit in the amount of U.S. \$8,030,000 (*i.e.*, an amount equal to 10 percent of the Original Contract Price set out therein of U.S. \$80,300,000).
116. However, in light of the fact that the relationship contemplated under the EPC Contract was not (and in fact could not legally have been) implemented and was displaced by the new construction arrangement with MBCI, it is my view that any amounts (including, in particular, the Deposit) that would have otherwise been paid or payable under the EPC Contract should have been returned to the Debtor and cannot be considered advances to the Debtor.

117. Pursuant to the MBBC Subcontract, China Everbest also agreed, among other things, that it would pay a deposit to MBBC in the amount of U.S. \$5,861,900. However, MBBC never entered into any subcontracts with the parties necessary to perform the work. The amount ended up being a flow through of the Debtor's own money to fund the construction directly with MBCI.
118. Moreover, pursuant to an email and letter from CMEC to the Debtor dated January 22, 2014 (attached previously as **Exhibit "S"**), CMEC confirmed that the balance of the Deposit (less payment to MBBC and Sinosure) would be returned to the Debtor if the project could not be commenced. The amount paid to MBBC and remitted to MBCI was simply a "flow through" of the Debtor's first payment to MBCI under the CPC Contract.
119. Lastly, U.S. \$5,861,900 was agreed to be returned back to the Debtor, once the project was completed and CMEC was repaid. The return of these funds was either going to occur through a return of a portion of the Debtor's U.S. \$8,030,000 Deposit or by way of a payment of U.S. \$5,800,000 to MBBC as its management fee. MBBC was never paid its management fee. Moreover, CMEC also registered this amount in a mortgage registered on June 11, 2016, and consequently seeks to recover this amount both under the CMEC Loan as well as on the profit under the EPC Contract.

### **XIII. Conclusion**

120. As set out herein, I am of the view that the Debtor is indebted to CMEC in the amount of U.S. \$53,919,076 as of May 8, 2018, and not in the amount of the CMEC Claimed Amount of U.S. \$71,929,604 as set out in the Xiaofan Affidavit.

121. I swear this Affidavit in support of the Debtor's position at the Trial and in response to the Xiaofan Affidavit, and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 14<sup>th</sup> day of  
June, 2018.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
YUEQING ZHANG

# **INDEX**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**CHINA MACHINERY ENGINEERING CORPORATION**

Applicant

-and-

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP  
and 2270613 ONTARIO INC.**

Respondents

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended

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U.	Search results produced by the Ontario Ministry of Government Services dated May 16, 2018 in respect of the name “China Everbest Development International Limited” and the NUANS search.
V.	Tarion Search Results of China Machinery Engineering Corporation and China Everbest Development International Limited re Builders Registration and the NUANS search.
W.	Email from Jennifer Xu to Xiofan Zhang dated January 15, 2014.
X.	Email between Maggie Liu and Xiofan Zhang between October 10, 2014 and October 14, 2014.
Y.	Agreements and relevant invoices
Z.	CPC Contract dated January 17, 2014
AA.	MBBC Subcontract dated January 22, 2014
BB.	Letter from CMEC to JD dated January 22, 2014
CC.	Bank statements evidencing the payment of the Deposit by the Debtor on January 23, 2014
DD.	Notice to Proceed from the Debtor to MBCI dated January 22, 2014
EE.	Notice to Proceed from the Debtor to the Consortium dated January 28, 2014
FF.	Notice to Proceed from China Everbest to MBBC dated January 30, 2014

GG.	Email from Xiaofan Zhang to Jennifer Xu dated January 16, 2014 attaching price table
HH.	Letter from CMEC to the Debtor dated February 18, 2014 annexing the Revised Price Table
II.	Requests for Advance
JJ.	MBBC Proforma Invoices
KK.	17 Consortium Pro Forma Invoices
LL.	MBCI Certificates dated November 16, 2015
MM.	CMEC Certificate dated January 31, 2016
NN.	Letter from CMEC to the Debtor dated April 21, 2016
OO.	Notice of Default and letter withdrawing same dated June 14, 2016
PP.	Notice of Default dated April 20, 2017
QQ.	June 2017 Payout Statement
RR.	BIA Notice from Davies to the Debtor dated November 6, 2017
SS.	November 2017 Payout Statement
TT.	Email from CMEC dated October 27, attaching 18 <sup>th</sup> Proforma Invoice
UU.	Email from Jennifer Xu to Xiofan Zhang dated January 16, 2014
VV.	Email from Xiofan Zhang to Jennifer Xu dated November 20, 2015
WW.	Email from Mi Chuan dated April 27, 2016 including draft Contract Price Letter
XX.	Litigation search dated June 1, 2018
YY.	Letter from the Debtor to CMEC and CED dated April 27, 2016
ZZ.	Letter from CMEC to JD dated December 9, 2016

**This is Exhibit "A" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVITS

## Construction and Engineering Company Overview of China Machinery Engineering Corporation

June 13, 2018 10:31 AM ET

### Snapshot

### People

#### Company Overview

China Machinery Engineering Corporation, together with its subsidiaries, operates as an engineering contracting and services provider in Asia, South America, North America, Africa, and Europe. It operates through three segments: Construction Contracts, Trading Business, and Services Business. The Construction Contracts segment undertakes engineering, procurement, and construction contracts for various infrastructure-related construction, including hydropower, thermal power, and other engineering contracting projects, as well as transportation, telecommunication, water supply and treatment, building and construction, manufacturing and processing plant, and mining and resources exploitation pr...

#### Key Executives For China Machinery Engineering Corporation

**Mr. Chun Zhang**  
Executive Chairman  
Age: 49 Total Annual Compensation: CNY1.8M

Compensation as of Fiscal Year 2016.

#### Detailed Description

CMEC Mansion  
No.178, Guanganmenwai  
Street  
Xicheng District  
Beijing, 100055  
China

Phone: 86 10 6345  
1188  
Fax: 86 10 6326 1865  
[www.cmecc.com](http://www.cmecc.com)

**Founded in 1978**  
**3,787 Employees**

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#### China Machinery Engineering Corporation Key Developments

### China Machinery Engineering Corporation Enters into a Contract with Siddiqsons Energy Limited

May 28 18

The board of directors of China Machinery Engineering Corporation announced that the company entered into a contract with Siddiqsons Energy Limited in respect of the Siddiqsons 1x330MW mine mouth coal power plant project at Thar Block-II, Sindh, Pakistan on May 26, 2018. According to the Contract, the scope of the Project entails the construction of a supercritical circulating fluidized bed boiler (CFB) coal-fired power plant generating unit with an installed capacity of 330MW, a complete set of auxiliary equipment, ancillary coal yards and other facilities. The company, as the general contractor, will be responsible for geographical survey, design, procurement of equipment, construction, installation, commissioning, performance test,

training and other works of the Project following general EPC terms. The contract value amounts to USD 262.5 million. As stipulated in the Contract, the Project will commence construction upon the satisfaction of certain conditions precedent. The construction period of the Project is expected to last for 32 months upon commencement of the construction.

### **China Machinery Engineering Corporation Recommends Special Dividend; Proposes Final Dividend for the Year Ended December 31, 2017**

May 7 18

China Machinery Engineering Corporation recommended the payment of special dividend of RMB 0.04 per share of the company and the company proposed a final dividend of RMB 0.1659 per share (pre-tax) for 4,125,700,000 shares for the year ended December 31, 2017 representing a total amount of RMB 684,453,630 (pre-tax), at the board meeting held on May 7, 2018.

### **China Machinery Engineering Corporation Reports Audited Consolidated Earnings Results for the Year Ended December 31, 2017**

Apr 27 18

China Machinery Engineering Corporation reported audited consolidated earnings results for the year ended December 31, 2017. For the year, the company reported revenue of RMB 23,682,177,000 against RMB 21,017,236,000 a year ago. Profit from operations was RMB 2,847,891,000 against RMB 1,567,115,000 a year ago. Profit before tax was RMB 2,252,891,000 against RMB 2,783,930,000 a year ago. Profit for the year was RMB 1,714,495,000 against RMB 2,109,790,000 a year ago. Profit for the year attributable to owners of the parent was RMB 1,711,203,000 against RMB 2,106,521,000 a year ago. EPS attributable to ordinary equity holders of the parent basic and diluted was 41 cents against 51 cents a year ago. Net cash flows from operating activities was RMB 694,325,000 against RMB 2,176,775,000 a year ago. Purchases of items of property, plant and equipment was RMB 679,135,000 against RMB 568,756,000 a year ago. Additions of other intangible assets were RMB 12,714,000 against RMB 5,756,000 a year ago. Additions of other long-term assets were RMB 19,040,000 against RMB 53,495,000 a year ago.

#### **Similar Private Companies By Industry**

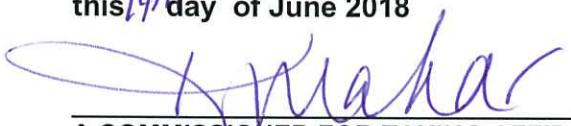
Company Name	Region
A La Shan Zuo Qi City Construction Investment Development Company	Asia
ABC Construction Engineering Co., LTD.	Asia
Aksu Xincheng Assets Investment Operation Co., Ltd.	Asia
Alaer Xinyangguang Technology Company Limited	Asia
Alistom (Wuhan) Engineering & Technology Co., Ltd.	Asia

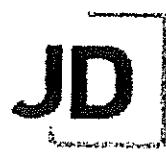
#### **Recent Private Companies Transactions**

Type	Date	Target
Merger/Acquisition	November 24, 2017	China National Electric Engineering Co., Ltd.

#### **Request Profile Update**

**This is Exhibit "B" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVITS



**PHILLIP STUDENT RESIDENCE PROJECT  
PHASE I  
IN WATERLOO, CANADA**

**BETWEEN**

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**

**AND**

**CHINA MACHINERY ENGINEERING  
CORPORATION**

**JANUARY, 2013**

A handwritten signature consisting of stylized, cursive initials "JD" followed by a surname.

A handwritten signature consisting of stylized, cursive initials "CMIEC".

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Agreement made on the 22<sup>nd</sup> day of January in the year 2013  
by and between

JD Development Phillip Street Limited  
hereinafter called the "Owner"

and

China Machinery Engineering Corporation  
hereinafter called the "Contractor"

The Owner and the Contractor agree as follows:

### **ARTICLE A-1 THE WORK**

1.1 The Work is comprised of the new construction of 2 distinct components:  
Building A (20-Storey Blair House) and Garage, both located at 256 Phillip Street,  
Waterloo, Ontario, Canada, N2L 6B6, details referring to the Technical  
Documents.

1.2 The Contractor shall:

.1 design, procure, construct and complete the Work and remedy any defects in  
the Work in accordance with the Contract Documents;

.2 do and fulfill everything indicated by this Agreement;

.3 attain Substantial Performance of the Work within a period of 24 months from  
the Commencement Date, subject to adjustment in Contract Time as provided  
for in the Contract Documents.

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## **ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

- 2.1 The Contract supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the Work, including the documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS,
- 2.2 The Contract may be amended only as provided in the Contract Documents.

## **ARTICLE A-3 CONTRACT DOCUMENTS**

- 3.1 The following are the Contract Documents referred to in Article A-1 of the Agreement - THE WORK:
  - the Agreement between the Owner and the Contractor,
  - the Definitions,
  - the Contract Conditions,
  - the Technical Documents
- 3.2 If there is a conflict within Contract Documents:
  - .1 The priority of documents, from highest to lowest, shall be
    - the Agreement between the Owner and the Contractor,
    - the Definitions,
    - the Contract Conditions,
    - the Technical Documents
  - .2 drawings of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on drawings shall govern over dimensions scaled from drawings.
  - .4 later dated documents shall govern over earlier documents of the same type.

## **ARTICLE A-4 CONTRACT PRICE**

- 4.1 The Contract Price is U.S. Dollars Eighty Million Three Hundred Thousand (USD 80,300,000.00), refer to Attachment 1 of Agreement – PRICE TABLE.

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- 4.2 The Contract Price shall be subject to adjustments as provided in the Contract Documents.
- 4.3 All taxes, including but not limited to Value Added Taxes, withholding tax, and income tax, etc., imposed by the government of Canada (federal, provincial and any other level of government) shall be borne by the Owner. All taxes imposed by the government of China shall be borne by the Contractor.
- 4.4 The Contract Price is made in U.S. Dollars.

#### **ARTICLE A-5 PAYMENT**

- 5.1 A Deposit with amount of ten percent (10%) of the Contract Price shall be provided by the Owner to the Contractor, as one of the conditions to effect the Contract.
- 5.2 The progress payment shall be ninety percent (90%) of the value of the part of the Work completed stated in every Progress Report, details referring to Part 5 of the Contract Conditions - PAYMENT.
- 5.3 Interest
  - .1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest at three percent (3%) per annum above the prime rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The prime rate shall be the lowest rate of interest quoted by the Royal Bank of Canada for prime business loans.
  - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the amount of any claim and for which the Contractor is thereafter entitled to payment, either pursuant to Part 8 of the Contract Conditions - DISPUTE RESOLUTION, or otherwise, from the date the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.

#### **ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES**

- 6.1 Communications in writing will be addressed to the recipient at the address set out below. The delivery of a written communication will be by hand, by courier,

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by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. Communications in writing delivered in accordance with this paragraph will be deemed to have been received by the addressee on the date of delivery if delivered by hand, or if sent by courier and mail shall be deemed to have been received ten calendar days after the date of sending mailing, provided that if either such day is not a Working Day, then the communication shall be deemed to have been received on the Working Day next following such day. Communications in writing sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of transmission provided that if such day is not a Working Day or if the written communication is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof. An address for a party may be changed by written notice setting out the new address in accordance with this Article.

The Owner at

Name of Owner: JD Development Phillip Street Limited

Address: 3601 Highway #7 East, suite 610, Markham, Ontario, Canada, L3R 0M3

Facsimile number: 001-905-479-9890

Email address: [info@jddevelopment.ca](mailto:info@jddevelopment.ca)

The Contractor at

Name of Contractor: China Machinery Engineering Corporation

Address: No. 178, Guanganmenwai Street, Xicheug District, Beijing, 100055

Facsimile number: +86 10 63477491

Email address: [zhangxf@mail.cmecc.com](mailto:zhangxf@mail.cmecc.com)

#### ARTICLE A-7    LANGUAGE AND LAW

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- 7.1 The Contract is prepared in the English language, and the language for communication shall be the English language.
- 7.2 This Contract shall be interpreted, construed and governed by the law of Ontario province of Canada.

#### **ARTICLE A-8    SUCCESSION**

- 8.1 The Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

#### **ARTICLE A-9    EFFECTIVE DATE**

- 9.1 This Contract will come into full force and effectiveness on the date of:

- .1 signing of the Agreement between the Owner and the Contractor;
- .2 receipt of the Deposit by the Contractor;
- .3 effective date of the insurance policy for the Contract issued by China Export & Credit Insurance Corporation,

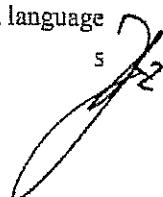
whichever is the latest.

#### **ARTICLE A-10    COMMENCEMENT DATE**

- 10.1 The Commencement Date means the date when all the followings are reached:

- .1 this Contract comes into full force and effectiveness; and
- .2 the Contractor receives a Notice to Proceed issued by the Owner.

In witness whereof the parties hereto have signed this Agreement and by the hands of their duly authorized representatives in two (2) original copies in the English language



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on the date appearing at the beginning. Each party shall hold one (1) original copy.

SIGNED AND DELIVERED

in the presence of:

OWNER

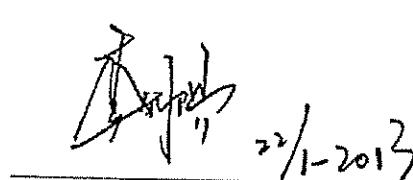
JD Development Phillip Street Limited

CONTRACTOR

China Machinery Engineering Corporation

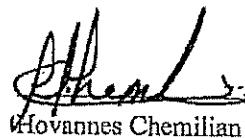


Yueqing Zhang,  
Chief Executive Officer



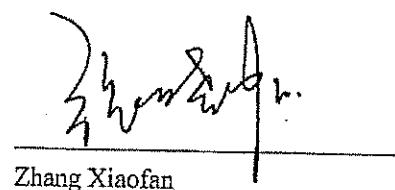
Li Chaoyang  
Vice President

WITNESS

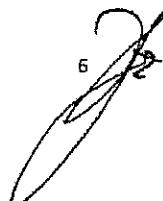


Hovannes Chemilian

WITNESS



Zhang Xiaofan



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on the date appearing at the beginning. Each party shall hold one (1) original copy.

SIGNED AND DELIVERED

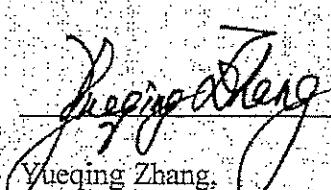
in the presence of:

OWNER

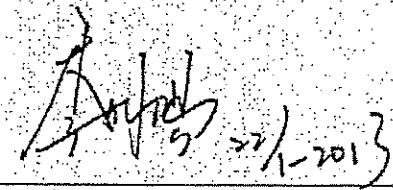
JD Development Phillip Street Limited

CONTRACTOR

China Machinery Engineering Corporation

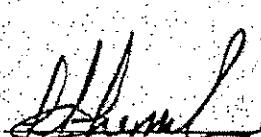


Yueqing Zhang,  
Chief Executive Officer

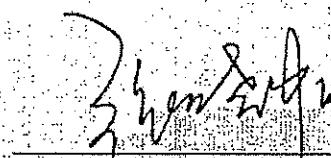
  
2013-1-22

Li Chaoyang  
Vice President

WITNESS

  
Hovannes Chemilian

WITNESS

  
Zhang Xiaofan

## DEFINITIONS.

The following Definitions shall apply to all Contract Documents.

1. Building A

Building A means a new approximately 20-storey commercial and residential condominium building, including related landscaping, to be constructed on the northwest corner of the Place of the Work and designated as Building A in the Contract Documents.

2. Change Directive

A Change Directive is a written instruction prepared by the Consultant and signed by the Owner directing the Contractor to proceed with a change in the Work within the general scope of the Contract Documents prior to the Owner and the Contractor agreeing upon adjustments in the Contract Price and the Contract Time.

3. Change Order

A Change Order is a written amendment to the Contract signed by the Owner and the Contractor stating their agreement upon:

- a change in the Work;
- the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
- the extent of the adjustment in the Contract Time, if any.

4. Commencement Date

The Commencement Date means the date stipulated in Article A-10 of the Agreement - COMMENCEMENT DATE.

5. Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Work but is not incorporated into the Work.

6. Consultant

The Consultant is the person or entity engaged by the Owner and identified as such in the Agreement. The Consultant is the Architect, the Engineer or entity licensed to practise in the province or territory of the Place of the Work. The term Consultant means the Consultant or the Consultant's authorized representative.

7. Contract

The Contract is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.

8. Contract Documents

The Contract Documents consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon in writing between the parties.

9. Contract Price

The Contract Price is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.

10. Contract Time

The Contract Time is the time stipulated in paragraph 1.2.3 of Article A-1 of the Agreement - THE WORK from commencement of the Work to Substantial Performance of the Work.

11. Contractor

The Contractor is the person or entity identified as such in the Agreement. The term Contractor means the Contractor or the Contractor's authorized representative as designated to the Owner in writing.

12. Deposit

The Deposit means the first payment of the Contract Price, with the amount stipulated in Article A-5 of the Agreement - PAYMENT.

13. Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams.

14. Garage

Garage means a new approximately 474-stall underground parking garage and related roads and access ways to be constructed at the Place of the Work to service Building A and other buildings to be constructed at the Place of the Work.

15. Notice in Writing

A Notice in Writing, where identified in the Contract Documents, is a written

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communication between the parties or between them and the Consultant that is transmitted in accordance with the provisions of Article A-6 of the Agreement — RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

16. Notice to Proceed

Notice to Proceed means a written notice issued by the Owner directing the Contractor to commence construction of the Work.

17. Owner

The Owner is the person or entity identified as such in the Agreement. The term Owner means the Owner or the Owner's authorized agent or representative as designated to the Contractor in writing.

18. Owner's Scope

The Owner's Scope means services provided to the Work by the Owner as prescribed in the Contract Documents.

19. Place of the Work

The Place of the Work is the designated site or location of the Work identified in the Contract Documents.

20. Product

Product or Products means material, machinery, equipment, and fixtures forming the Work, but does not include Construction Equipment.

21. Project

The Project means the total construction contemplated of which the Work may be the whole or a part.

22. Progress Report

The Progress Report means the document entitled progress report, provided by the Contractor, showing the progress of construction of the Work.

23. Progress Certificate

The Progress Certificate means the document entitled progress certificate, issued by the Owner to the Contractor, confirming the progress of construction of the Work performed by the Contractor.

24. Project Schedule

Project Schedule means a document entitled project schedule, prepared by the

Contractor in accordance with the Contract.

25. Project Team

Project Team means the Contractor's personnel assigned to perform the Project.

26. Provide

Provide means to supply and install.

27. Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, or other data which the Contractor provides to illustrate details of portions of the Work.

28. Specifications

The Specifications are that portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for Products, systems, workmanship, quality, and the services necessary for the performance of the Work.

29. Subcontractor

A Subcontractor is a person or entity having a direct contract with the Contractor to perform a part or parts of the Work at the Place of the Work.

30. Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, Substantial Performance of the Work shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Owner.

31. Supplemental Instruction

A Supplemental Instruction is an instruction, not involving adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.

32. Supplier

A Supplier is a person or entity having a direct contract with the Contractor to supply Products.

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**33. Technical Documents**

Technical Documents means the documents entitled technical documents, agreed by the two parties.

**34. Temporary Work**

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding Construction Equipment, required for the execution of the Work but not incorporated into the Work.

**35. Value Added Taxes**

Value Added Taxes means such sum as shall be levied upon the Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Contract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the Contractor by the tax legislation.

**36. Work**

The Work means the total construction and related services required by the Contract Documents.

**37. Working Day**

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the Place of the Work.

**38. Year**

Year means 365 days.

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## **CONTRACT CONDITIONS**

### **PART 1 GENERAL PROVISIONS**

#### **CC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by the Contractor in accordance with these documents. It is not intended, however, that the Contractor shall supply products or perform work not consistent with, not covered by, or not properly inferable from the Contract Documents.
- 1.1.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.3 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.1.4 References in the Contract Documents to the singular shall be considered to include the plural as the context requires.
- 1.1.5 Neither the organization of the Specifications nor the arrangement of Drawings shall control the Contractor in dividing the work among Subcontractors and Suppliers.
- 1.1.6 The Owner shall provide the Contractor, without charge, sufficient copies of the Contract Documents to perform the Work.
- 1.1.7 Models furnished by the Contractor at the Owner's expense are the property of the Owner.

#### **CC 1.2 LAW OF THE CONTRACT**

- 1.2.1 The law of Ontario province of Canada shall govern the interpretation of the Contract.

#### **CC 1.3 RIGHTS AND REMEDIES**

- 1.3.1 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the Owner, Consultant or Contractor shall

constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **CC 1.4 ASSIGNMENT**

- 1.4.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

### **PART 2 ADMINISTRATION OF THE CONTRACT**

#### **CC 2.1 AUTHORITY OF THE CONSULTANT**

- 2.1.1 The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of the Owner, the Contractor and the Consultant.
- 2.1.3 If the Consultant's employment is terminated, the Owner shall immediately appoint or reappoint a Consultant against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former Consultant.

#### **CC 2.2 ROLE OF THE CONSULTANT**

- 2.2.1 The Consultant will provide administration of the Contract as described in the Contract Documents.
- 2.2.2 The Consultant will visit the Place of the Work at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.
- 2.2.3 If the Owner and the Consultant agree, the Consultant will provide at the Place of the Work, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the Contractor.
- 2.2.4 The Consultant will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or

procedures, or for safety precautions and programs required in connection with the Work in accordance with the applicable construction safety legislation, other regulations or general construction practice. The Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Consultant will not have control over, charge of or be responsible for the acts or omissions of the Contractor, Subcontractors, Suppliers, or their agents, employees, or any other persons performing portions of the Work.

- 2.2.5 Except with respect to Part 5 of the Contract Conditions - PAYMENT, the Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents.
- 2.2.6 Matters in question relating to the interpretation of the Contract Documents shall be initially referred in writing to the Consultant by the party raising the question for interpretations and findings and copied to the other party.
- 2.2.7 Interpretations and findings of the Consultant shall be consistent with the intent of the Contract Documents. In making such interpretations and findings the Consultant will not show partiality to either the Owner or the Contractor.
- 2.2.8 The Consultant's interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.2.9 With respect to claims for a change in Contract Price, the Consultant will make findings as set out in CC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.
- 2.2.10 The Consultant will have authority to reject work which in the Consultant's opinion does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to the Contractor, Subcontractors, Suppliers, or their agents, employees, or other persons performing any of the Work.
- 2.2.11 During the progress of the Work the Consultant will furnish Supplemental Instructions to the Contractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Consultant and the Contractor. If, in the opinion of the Contractor, a Supplemental Instruction involves an adjustment in the Contract Price or in the Contract Time, the Contractor shall, within five (5) Working Days of receipt of a Supplemental Instruction provide the Owner and the Consultant with a written notice to that effect and await further instructions.
- 2.2.12 The Consultant will review and take appropriate action upon Shop Drawings,

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samples and other Contractor's submittals, in accordance with the Contract Documents.

- 2.2.13 The Consultant will prepare Change Orders and Change Directives as provided in CC 6.2 - CHANGE ORDER and CC 6.3 - CHANGE DIRECTIVE.
- 2.2.14 The Consultant will conduct reviews of the Work to determine the date of Substantial Performance of the Work as provided in CC 5.3 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.15 All certificates if any issued by the Consultant will be to the best of the Consultant's knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee the Work is correct or complete.
- 2.2.16 The Consultant will receive and review written warranties and related documents required by the Contract and provided by the Contractor and will forward such warranties and documents to the Owner for the Owner's acceptance.

### **CC 2.3 REVIEW AND INSPECTION OF THE WORK**

- 2.3.1 The Owner and the Consultant shall have access to the Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner and the Consultant shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections or approvals in the Contract Documents, or by the Consultant's instructions, or by the laws or ordinances of the Place of the Work, the Contractor shall give the Consultant reasonable notification of when the work will be ready for review and inspection. The Contractor shall arrange for and shall give the Consultant reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 If the Contractor covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the Contractor's expense.
- 2.3.4 The Consultant may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of the Contract Documents. If the work is not in accordance with the requirements of the Contract Documents, the Contractor shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the Contract Documents, the Owner shall pay the cost of

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examination and restoration.

- 2.3.5 The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Contract Documents to be performed by the Contractor or is designated by the laws or ordinances applicable to the Place of the Work.
- 2.3.6 The Contractor shall pay the cost of samples required for any test or inspection to be performed by the Consultant or the Owner if such test or inspection is designated in the Contract Documents.

#### **CC 2.4 DEFECTIVE WORK**

- 2.4.1 The Contractor shall promptly correct defective work that has been rejected by the Consultant as failing to conform to the Contract Documents whether or not the defective work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor.
- 2.4.2 The Contractor shall make good promptly other contractors' work destroyed or damaged by such corrections at the Contractor's expense.
- 2.4.3 If the Contractor does not correct defective work as provided in the Contract Documents, the Owner may deduct from the amount otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents. If the Owner and the Contractor do not agree on the difference in value, they shall resolve the matter pursuant to Part 8 of the Contract Conditions – DISPUTE RESOLUTION.

### **PART 3 EXECUTION OF THE WORK**

#### **CC 3.1 CONTROL OF THE WORK**

- 3.1.1 The Contractor shall have total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents.
- 3.1.2 The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Work under the Contract.

#### **CC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

- 3.2.1 The Owner reserves the right to award separate contracts in connection with

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other parts of the Project to other contractors and to perform work with own forces.

- 3.2.2 When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner's own forces, the Owner shall:
- .1 provide for the co-ordination of the activities and work of other contractors and Owner's own forces with the Work of the Contract;
  - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the Place of the Work;
  - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the Contract;
  - .4 ensure that insurance coverage is provided to the same requirements as are called for in CC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the Contractor as it affects the Work; and
  - .5 take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the work of other contractors or the Owner's own forces.
- 3.2.3 When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner's own forces, the Contractor shall:
- .1 afford the Owner and other contractors reasonable opportunity to store their products and execute their work;
  - .2 cooperate with other contractors and the Owner in reviewing their construction schedules; and
  - .3 promptly report to the Consultant in writing any apparent deficiencies in the work of other contractors or of the Owner's own forces, where such work affects the proper execution of any portion of the Work, prior to proceeding with that portion of the Work.
- 3.2.4 Where the Contract Documents identify work to be performed by other contractors or the Owner's own forces, the Contractor shall co-ordinate and schedules the Work with the work of other contractors and the Owner's own forces as specified in the Contract Documents.
- 3.2.5 Where a change in the Work is required as a result of the co-ordination and integration of the work of other contractors or Owner's own forces with the Work, the changes shall be authorized and valued as provided in CC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, CC 6.2 - CHANGE ORDER and CC 6.3 - CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the Contractor and other contractors shall be dealt with as provided in Part 8 of the Contract Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal

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obligations. The Contractor shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the Owner contains a similar agreement to arbitrate.

### CC 3.3 TEMPORARY WORK

- 3.3.1 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of Temporary Work.
- 3.3.2 The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the Contract Documents and in all cases where such Temporary Work is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of CC 3.1 - CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for Temporary Work or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Work.

### CC 3.4 DOCUMENT REVIEW

- 3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall be to the best of the Contractor's knowledge, information and belief and in making such review the Contractor does not assume any responsibility to the Owner or the Consultant for the accuracy of the review. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the Contract Documents, which the Contractor did not discover. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the Consultant.

### CC 3.5 CONSTRUCTION SCHEDULE

- 3.5.1 The Contractor shall:
  - .1 prepare and submit to the Owner, a construction schedule that indicates the

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timing of the major activities of the Work and provides sufficient detail of the critical events and their inter-relationship to demonstrate the Work will be performed in conformity with the Contract Time;

- .2 monitor the progress of the Work relative to the construction schedule and update the schedule as stipulated by the Contract Documents; and
- .3 advise the Consultant of any revisions required to the schedule as the result of extensions of the Contract Time as provided in Part 6 of the Contract Conditions - CHANGES IN THE WORK.

### CC 3.6 SUPERVISION

- 3.6.1 The Contractor shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the Place of the Work while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.6.2 The appointed representative shall represent the Contractor at the Place of the Work. Information and instructions provided by the Consultant to the Contractor's appointed representative shall be deemed to have been received by the Contractor, except with respect to Article A-6 of the Agreement -- RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### CC 3.7 SUBCONTRACTORS AND SUPPLIERS

- 3.7.1 The Contractor shall preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract, and shall:
  - .1 enter into contracts or written agreements with Subcontractors and Suppliers to require them to perform their work as provided in the Contract Documents;
  - .2 incorporate the terms and conditions of the Contract Documents into all contracts or written agreements with Subcontractors and Suppliers; and
  - .3 be as fully responsible to the Owner for acts and omissions of Subcontractors, Suppliers and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor, except the acts and omissions of any Subcontractor or Supplier nominated by the Owner.
- 3.7.2 The Contractor shall indicate in writing, if requested by the Owner, those Subcontractors or Suppliers whose bids have been received by the Contractor which the Contractor would be prepared to accept for the performance of a portion of the Work. Should the Owner not object before signing the Contract, the Contractor shall employ those Subcontractors or Suppliers so identified by

the Contractor in writing for the performance of that portion of the Work to which their bid applies.

- 3.7.3 The Owner may, for reasonable cause, at any time before the Owner has signed the Contract, object to the use of a proposed Subcontractor or Supplier and require the Contractor to employ one of the other subcontract bidders.
- 3.7.4 If the Owner requires the Contractor to change a proposed Subcontractor or Supplier, the Contract Price and Contract Time shall be adjusted by the differences occasioned by such required change.
- 3.7.5 The Contractor shall not be required to employ as a Subcontractor or Supplier, a person or firm to which the Contractor may reasonably object.
- 3.7.6 The Owner, through the Consultant, may provide to a Subcontractor or Supplier information as to the percentage of the Subcontractor's or Supplier's work which has been certified for payment.

#### **CC 3.8 LABOUR AND PRODUCTS**

- 3.8.1 The Contractor shall provide and pay for labour, Products, tools, Construction Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.
- 3.8.2 Unless otherwise specified in the Contract Documents, Products provided shall be new. Products which are not specified shall be of a quality consistent with those specified.
- 3.8.3 The Contractor shall maintain good order and discipline among the Contractor's employees engaged on the Work and shall not employ on the Work anyone not skilled in the tasks assigned.

#### **CC 3.9 DOCUMENTS AT THE SITE**

- 3.9.1 The Contractor shall keep one copy of current Contract Documents, submittals, reports, and records of meetings at the Place of the Work, in good order and available to the Owner and the Consultant.

#### **CC 3.10 SHOP DRAWINGS**

- 3.10.1 The Contractor shall provide Shop Drawings as required in the Contract Documents.
- 3.10.2 The Contractor shall provide Shop Drawings to the Consultant to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors.



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- 3.10.3 Upon request of the Contractor or the Consultant, they shall jointly prepare a schedule of the dates for provision, review and return of Shop Drawings.
- 3.10.4 The Contractor shall provide Shop Drawings in the form specified, or if not specified, as directed by the Consultant.
- 3.10.5 Shop Drawings provided by the Contractor to the Consultant shall indicate by stamp, date and signature of the person responsible for the review that the Contractor has reviewed each one of them.
- 3.10.6 The Consultant's review is for conformity to the design concept and for general arrangement only.
- 3.10.7 Shop Drawings which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the Contractor for approval.
- 3.10.8 The Contractor shall review all Shop Drawings before providing them to the Consultant. The Contractor represents by this review that:
- .1 the Contractor has determined and verified all applicable field measurements, field construction conditions, Product requirements, catalogue numbers and similar data, or will do so, and
  - .2 the Contractor has checked and co-ordinated each Shop Drawing with the requirements of the Work and of the Contract Documents.
- 3.10.9 At the time of providing Shop Drawings, the Contractor shall expressly advise the Consultant in writing of any deviations in a Shop Drawing from the requirements of the Contract Documents. The Consultant shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The Consultant's review shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Contract Documents.
- 3.10.11 The Contractor shall provide revised Shop Drawings to correct those which the Consultant rejects as inconsistent with the Contract Documents, unless otherwise directed by the Consultant. The Contractor shall notify the Consultant in writing of any revisions to the Shop Drawings other than those requested by the Consultant.
- 3.10.12 The Consultant will review and return Shop Drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the Work.

### CC 3.11 USE OF THE WORK

- 3.11.1 The Contractor shall confine Construction Equipment, Temporary Work, storage of Products, waste products and debris, and operations of employees

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and Subcontractors to limits indicated by laws, ordinances, permits, or the Contract Documents and shall not unreasonably encumber the Place of the Work.

- 3.11.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.

#### **CC 3.12 CUTTING AND REMEDIAL WORK**

- 3.12.1 The Contractor shall perform the cutting and remedial work required to make the affected parts of the Work come together properly.
- 3.12.2 The Contractor shall co-ordinate the Work to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the Owner, the Consultant, other contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in CC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, CC 6.2 - CHANGE ORDER and CC 6.3 - CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.

#### **CC 3.13 CLEANUP**

- 3.13.1 The Contractor shall maintain the Work in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, other contractors or their employees.
- 3.13.2 Before applying for Substantial Performance of the Work, the Contractor shall remove waste products and debris, other than that resulting from the work of the Owner, other contractors or their employees, and shall leave the Place of the Work clean and suitable for use or occupancy by the Owner. The Contractor shall remove products, tools, Construction Equipment, and Temporary Work not required for the performance of the remaining work.
- 3.13.3 Prior to completion, the Contractor shall remove any remaining products, tools, Construction Equipment, Temporary Work, and waste products and debris, other than those resulting from the work of the Owner, other contractors or their employees.

#### **PART 4 PLACE OF THE WORK**

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#### **CC 4.1 RIGHT OF ACCESS TO THE PLACE OF THE WORK**

- 4.1.1 The Owner shall give the Contractor right of access to, and possession of the Place of the Work 7 Working Days before the date of issuing the Notice to Proceed, otherwise the Commencement Date shall be postponed accordingly.
- 4.1.2 The Owner shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim arising out of or related to the Place of the Work.

### **PART 5 PAYMENT**

#### **CC 5.1 DEPOSIT**

- 5.1.1 A Deposit with amount of ten percent (10%) of the Contract Price shall be provided by the Owner to the Contractor.

#### **CC 5.2 PROGRESS PAYMENTS**

- 5.2.1 The progress payment, i.e. ninety percent (90%) of the value of the part of the Work completed stated in every Progress Report, shall be paid against monthly Progress Report and invoice with said value.
- 5.2.2 The Contractor shall provide monthly Progress Report to the Owner from the Commencement Date. Monthly Progress Report shall be dated the last day of each month. After receipt of such Progress Report, the Owner shall issue Progress Certificate to the Contractor to confirm the progress of work completed by the Contractor and to confirm the value of such work.
- 5.2.3 For the monthly Progress Reports of the first six months following the Commencement Date, the Owner shall issue one Progress Certificate to confirm work completed by the Contractor during said six months on the fifth day of the seventh month.
- 5.2.4 From the seventh month, the Owner shall issue the Progress Certificate monthly. Within five days after receipt of Progress Report provided by the Contractor, the Owner shall issue corresponding Progress Certificate.
- 5.2.5 The Progress Certificate shall be deemed to constitute acceptance of the part of Work stated in the Progress Certificate, and the risk for such part of Work shall be deemed transferred to the Owner from the date stated on the Progress Certificate.
- 5.2.6 It is acknowledged and agreed by the two parties that the Progress Certificate and the invoice are the only needed documents for progress payment. If the Owner fails to issue the Progress Certificate according to Part 5 of Contract

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Conditions – PAYMENT, the Progress Report shall be deemed as Progress Certificate.

- 5.2.7 The progress payments shall be made against Progress Certificate and corresponding invoice according to the schedule specified in Attachment 1 of Contract Conditions – DEFERRED PAYMENT SCHEDULE.

### **CC 5.3 SUBSTANTIAL PERFORMANCE OF THE WORK**

- 5.3.1 When the Contractor considers that the Work is substantially performed, or if permitted by the lien legislation applicable to the Place of the Work a designated portion thereof which the Owner agrees to accept separately is substantially performed, the Contractor shall give one Working Day prior notice in writing to the Owner for application for a review by the Owner to establish Substantial Performance of the Work or substantial performance of the designated portion of the Work.
- 5.3.2 The Owner will review the Work to verify the validity of application and shall promptly, and in any event, no later than ten calendar days after receipt the Contractor's application:
- .1 advise the Contractor in writing that the Work or the designated portion of the Work is not substantially performed and give reasons why, or
  - .2 state the date of Substantial Performance of the Work or a designated portion of the Work in a certificate and issue a copy of that certificate to the Contractor.
- 5.3.3 Immediately following the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Consultant, shall establish a reasonable date for finishing the Work.

## **PART 6 CHANGES IN THE WORK**

### **CC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The Owner, through the Consultant, without invalidating the Contract, may make:
- .1 changes in the Work consisting of additions, deletions or other revisions to the Work by Change Order or Change Directive, and
  - .2 changes to the Contract Time for the Work, or any part thereof, by Change Order.
- 6.1.2 The Contractor shall not perform a change in the Work without a Change Order or a Change Directive.

## **CC 6.2 CHANGE ORDER**

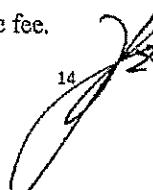
- 6.2.1 When a change in the Work is proposed or required, the Consultant will provide the Contractor with a written description of the proposed change in the Work. The Contractor shall promptly present, in a form acceptable to the Consultant, a method of adjustment or an amount of adjustment for the Contract Price, if any, and the adjustment in the Contract Time, if any, for the proposed change in the Work.
- 6.2.2 When the Owner and Contractor agree to the adjustments in the Contract Price and Contract Time or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a Change Order. The value of the work performed as the result of a Change Order shall be included in the application for progress payment.

## **CC 6.3 CHANGE DIRECTIVE**

- 6.3.1 If the Owner requires the Contractor to proceed with a change in the Work prior to the Owner and the Contractor agreeing upon the corresponding adjustment in Contract Price and Contract Time, the Owner, through the Consultant, shall issue a Change Directive.
- 6.3.2 A Change Directive shall only be used to direct a change in the Work which is within the general scope of the Contract Documents.
- 6.3.3 A Change Directive shall not be used to direct a change in the Contract Time only.
- 6.3.4 Upon receipt of a Change Directive, the Contractor shall proceed promptly with the change in the Work.
- 6.3.5 For the purpose of valuing Change Directives, changes in the Work that are not substitutions or otherwise related to each other shall not be grouped together in the same Change Directive.
- 6.3.6 The adjustment in the Contract Price for a change carried out by way of a Change Directive shall be determined on the basis of the cost of the Contractor's actual expenditures and savings attributable to the Change Directive, valued in accordance with paragraph 6.3.7 and as follows:
  - .1 If the change results in a net increase in the Contractor's cost, the Contract Price shall be increased by the amount of the net increase in the Contractor's cost, plus the Contractor's percentage fee on such net increase.
  - .2 If the change results in a net decrease in the Contractor's cost, the Contract Price shall be decreased by the amount of the net decrease in the Contractor's cost, without adjustment for the Contractor's percentage fee.

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.3 The Contractor's fee shall be as specified in the Contract Documents or as otherwise agreed by the parties.

6.3.7 The cost of performing the work attributable to the Change Directive shall be limited to the actual cost of the following:

.1 salaries, wages and benefits paid to personnel in the direct employ of the Contractor under a salary or wage schedule agreed upon by the Owner and the Contractor, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the Contractor, for personnel

- (1) stationed at the Contractor's field office, in whatever capacity employed;
- (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
- (3) engaged in the preparation or review of Shop Drawings, fabrication drawings, and coordination drawings; or
- (4) engaged in the processing of changes in the Work.

.2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Contractor and included in the cost of the Work as provided in paragraph 6.3.7.1;

.3 travel and subsistence expenses of the Contractor's personnel described in paragraph 6.3.7.1;

.4 all Products including cost of transportation thereof;

.5 materials, supplies, Construction Equipment, Temporary Work, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the Work; and cost less salvage value on such items used but not consumed, which remain the property of the Contractor;

.6 all tools and Construction Equipment, exclusive of hand tools used in the performance of the Work, whether rented from or provided by the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;

.7 all equipment and services required for the Contractor's field office;

.8 deposits lost;

.9 the amounts of all subcontracts;

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- .10 quality assurance such as independent inspection and testing services;
  - .11 charges levied by authorities having jurisdiction at the Place of the Work;
  - .12 royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefor subject always to the Contractor's obligations to indemnify the Owner as provided in paragraph 10.3.1 of CC 10.3 - PATENT FEES;
  - .13 any adjustment in premiums for all bonds and insurance which the Contractor is required, by the Contract Documents, to purchase and maintain;
  - .14 any adjustment in taxes, other than Value Added Taxes, and duties for which the Contractor is liable;
  - .15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the Work;
  - .16 removal and disposal of waste products and debris; and
  - .17 safety measures and requirements.
- 6.3.8 Notwithstanding any other provisions contained in the Contract Conditions of the Contract, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the Change Directive other than those which are the result of or occasioned by any failure on the part of the Contractor to exercise reasonable care and diligence in the Contractor's attention to the Work. Any cost due to failure on the part of the Contractor to exercise reasonable care and diligence in the Contractor's attention to the Work shall be borne by the Contractor.
- 6.3.9 The Contractor shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the Work attributable to the Change Directive and shall provide the Consultant with copies thereof when requested.
- 6.3.10 For the purpose of valuing Change Directives, the Owner shall be afforded reasonable access to all of the Contractor's pertinent documents related to the cost of performing the Work attributable to the Change Directive.
- 6.3.11 Pending determination of the final amount of a Change Directive, the undisputed value of the Work performed as the result of a Change Directive is eligible to be included in progress payments.
- 6.3.12 If the Owner and the Contractor do not agree on the proposed adjustment in the Contract Time attributable to the change in the Work, or the method of determining it, the adjustment shall be referred to the Consultant for

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determination.

- 6.3.13 When the Owner and the Contractor reach agreement on the adjustment to the Contract Price and to the Contract Time, this agreement shall be recorded in a Change Order.

#### **CC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- 6.4.1 If the Owner or the Contractor discover conditions at the Place of the Work which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or
  - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give Notice in Writing to the other party of such conditions before they are disturbed and in no event later than 5 Working Days after first observance of the conditions.
- 6.4.2 The Consultant will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Consultant, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in CC 6.2 - CHANGE ORDER or CC 6.3 - CHANGE DIRECTIVE.
- 6.4.3 If the Consultant finds that the conditions at the Place of the Work are not materially different or that no change in the Contract Price or the Contract Time is justified, the Consultant will report the reasons for this finding to the Owner and the Contractor in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, or artifacts and fossils, the parties will be governed by the provisions of CC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES and CC 9.3 - ARTIFACTS AND FOSSILS.

#### **CC 6.5 DELAYS**

- 6.5.1 If the Contractor is delayed in the performance of the Work by an action or omission of the Owner, Consultant or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The

Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.

- 6.5.2 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.
- 6.5.3 If the Contractor is delayed in the performance of the Work by:
  - .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound),
  - .2 fire, unusual delay by common carriers or unavoidable casualties,
  - .3 abnormally adverse weather conditions, or
  - .4 any cause beyond the Contractor's control other than one resulting from a default or breach of Contract by the Contractor,then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner, Consultant or anyone employed or engaged by them directly or indirectly.
- 6.5.4 If the Contractor is delayed in the performance of the Work by natural catastrophes such as earthquake, hurricane, storm, typhoon or volcanic activities, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.
- 6.5.5 If no schedule is made under paragraph 2.2.11 of CC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the Consultant to furnish instructions until 10 Working Days after demand for such instructions has been made.

#### **CC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

- 6.6.1 If the Contractor intends to make a claim for an increase to the Contract Price,  
  
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or if the Owner intends to make a claim against the Contractor for a credit to the Contract Price, the party that intends to make the claim shall give timely Notice in Writing of intent to claim to the other party and to the Consultant.

- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
  - .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
  - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the Consultant a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the Consultant may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The Consultant's findings, with respect to a claim made by either party, will be given by Notice in Writing to both parties within 30 Working Days after receipt of the claim by the Consultant, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the Contract Conditions - DISPUTE RESOLUTION.

## PART 7 DEFAULT NOTICE

### CC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency, or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contractor's right to continue with the Work, by giving the Contractor or receiver or trustee in bankruptcy Notice in Writing to that effect.

- 7.1.2 If the Contractor neglects to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Consultant has given a written statement to the Owner and Contractor that sufficient cause exists to justify such action, the Owner may, without prejudice to any other right or remedy the Owner may have, give the Contractor Notice in Writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such Notice in Writing.
- 7.1.3 If the default cannot be corrected in the 5 Working Days specified or in such other time period as may be subsequently agreed in writing by the parties, the Contractor shall be in compliance with the Owner's instructions if the Contractor:
- .1 commences the correction of the default within the specified time, and
  - .2 provides the Owner with an acceptable schedule for such correction, and
  - .3 corrects the default in accordance with the Contract terms and with such schedule.
- 7.1.4 If the Contractor fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the Owner may have, the Owner may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor provided the Consultant has certified such cost to the Owner and the Contractor, or
  - .2 terminate the Contractor's right to continue with the Work in whole or in part or terminate the Contract.
- 7.1.5 If the Owner terminates the Contractor's right to continue with the Work as provided in paragraphs 7.1.1 and 7.1.4, the Owner shall be entitled to:
- .1 be entitled to take possession of the Work and Products; utilize the Construction Equipment; subject to the rights of third parties, finish the Work by whatever method the Owner may consider expedient and
  - .2 pay the Contractor for Work, Products and any other sums due the Contractor, and
  - .3 pay to the Contractor fair compensation, either by purchase or rental, at the agreement of the two parties, for any Construction Equipment retained for use on the Work, and
  - .4 assume and become liable for all obligations, commitments and unliquidated claims as certified by the Consultant that the Contractor may have theretofore, in good faith, undertaken or incurred in connection with

the Work, other than such as are properly payable by the Contractor because of neglect or default.

- 7.1.6 If the Owner terminates the Contractor's right to continue with the Work as provided in paragraphs 7.1.1 and 7.1.4, the Contractor shall, as a condition of receiving the payments, execute and deliver such papers and take such action, including the legal assignment in the Contractor's contractual rights, as the Owner may require for the purpose of fully vesting in the Contractor the rights and benefits of the Contractor under the obligations or commitments to be assumed by the Owner.
- 7.1.7 The Contractor's obligation under the Contract as to quality, correction and warranty of the work performed by the Contractor up to the time of termination shall continue after such termination of the Contract.

#### **CC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

- 7.2.1 If the Owner is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Owner's insolvency, or if a receiver is appointed because of the Owner's insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving the Owner or receiver or trustee in bankruptcy Notice in Writing to that effect.
- 7.2.2 If the Work is suspended or otherwise delayed for a period of 20 Working Days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving the Owner Notice in Writing to that effect.
- 7.2.3 The Contractor may give Notice in Writing to the Owner, with a copy to the Consultant, that the Owner is in default of the Owner's contractual obligations if:
  - .1 the Owner fails to furnish, when so requested by the Contractor, reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract, or
  - .2 the Owner fails to issue a certificate as provided in CC 5.2 - PROGRESS PAYMENT, or
  - .3 the Owner fails to pay the Contractor when due according to the Contract or awarded by arbitration or court, or
  - .4 the Owner violates the requirements of the Contract to a substantial degree.

- 7.2.4 The Contractor's Notice in Writing to the Owner provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 Working Days following the receipt of the Notice in Writing, the Contractor may, without prejudice to any other right or remedy the Contractor may have, suspend the Work or terminate the Contract.
- 7.2.5 If the Contractor terminates the Contract under the conditions set out above, the Contractor shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the termination of the Contract.

## PART 8 DISPUTE RESOLUTION

### CC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 If differences between the parties to the Contract as to the interpretation, application or administration of the Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the Consultant as provided in CC 2.2 - ROLE OF THE CONSULTANT, or if a dispute arises under the Contract in respect of a matter in which the Consultant has no authority under the Contract to make a finding, then the disputes shall be settled by arbitration.
- 8.1.2 The arbitration shall be conducted in Singapore International Arbitration Centre (hereinafter referred as "SIAC") in Singapore in accordance with the Arbitration Rules of the SIAC in force. The tribunal shall consist of three arbitrators to be appointed by the Chairman of the SIAC. The arbitration award is final and binding upon both parties. All proceedings of the arbitration, including arguments and briefs shall be conducted in English.
- 8.1.3 If a dispute is not resolved promptly, the Consultant will give such instructions as in the Consultant's opinion are necessary for the proper performance of the Work and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, the Owner shall pay the Contractor costs incurred by the Contractor in carrying out such instructions which the Contractor was required to do beyond what the Contract Documents correctly understood and interpreted would have required, including costs resulting from interruption of the Work.



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## **CC 8.2 RETENTION OF RIGHTS**

- 8.2.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the Notice in Writing required under Part 8 of the Contract Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.4 of CC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.2.2 Nothing in Part 8 of the Contract Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the Place of the Work.

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **CC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The Contractor shall protect the Work and the Owner's property and property adjacent to the Place of the Work from damage which may arise as the result of the Contractor's operations under the Contract, and shall be responsible for such damage, except damage which occurs as the result of:
  - .1 errors in the Contract Documents;
  - .2 acts or omissions by the Owner, the Consultant, other contractors, their agents and employees.
- 9.1.2 Should the Contractor in the performance of the Contract damage the Work, the Owner's property or property adjacent to the Place of the Work, the Contractor shall be responsible for making good such damage at the Contractor's expense.
- 9.1.3 Should damage occur to the Work or Owner's property for which the Contractor is not responsible, as provided in paragraph 9.1.1, the Contractor shall make good such damage to the Work and, if the Owner so directs, to the Owner's property. The Contract Price and Contract Time shall be adjusted as provided in CC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, CC 6.2 - CHANGE ORDER and CC 6.3 - CHANGE DIRECTIVE.

### **CC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the Owner shall be deemed to have control and management of the Place of the Work with respect to existing conditions.
- 9.2.2 Prior to the Contractor commencing the Work, the Owner shall,

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- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the Place of the Work, and
  - .2 provide the Consultant and the Contractor with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The Owner shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the Place of the Work and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the Place of the Work prior to the Contractor commencing the Work.
- 9.2.4 Unless the Contract expressly provides otherwise, the Owner shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the Place of the Work prior to the Contractor commencing the Work.
- 9.2.5 If the Contractor
- .1 encounters toxic or hazardous substances at the Place of the Work, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work, which were not brought to the Place of the Work by the Contractor or anyone for whom the Contractor is responsible and which were not disclosed by the Owner or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the Contractor shall
  - .3 take all reasonable steps, including stopping the Work, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the Place of the Work, and
  - .4 immediately report the circumstances to the Consultant and the Owner in writing.
- 9.2.6 If the Owner and Contractor do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the Place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and the Contractor.
- 9.2.7 If the Owner and Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Owner shall promptly at the Owner's own expense:

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- .1 take all steps as required under paragraph 9.2.4;
  - .2 reimburse the Contractor for the costs of all steps taken pursuant to paragraph 9.2.5;
  - .3 extend the Contract time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in 9.2.6 and reimburse the Contractor for reasonable costs incurred as a result of the delay; and
  - .4 indemnify the Contractor as required by CC 12.1 - INDEMNIFICATION.
- 9.2.8 If the Owner and Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Contractor shall promptly at the Contractor's own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to safely remove and dispose the toxic or hazardous substances;
  - .2 make good any damage to the Work, the Owner's property or property adjacent to the place of the Work as provided in paragraph 9.1.3 of CC 9.1 – PROTECTION OF WORK AND PROPERTY;
  - .3 reimburse the Owner for reasonable costs incurred under paragraph 9.2.6; and
  - .4 indemnify the Owner as required by CC 12.1 - INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the Contract Conditions - DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by CC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES.

### CC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place of Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.
- 9.3.2 The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the Consultant upon discovery of such items.
- [Handwritten signatures and initials over the bottom right corner]*

- 9.3.3 The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Consultant, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in CC 6.2 - CHANGE ORDER or CC 6.3 CHANGE DIRECTIVE.

#### **CC 9.4 CONSTRUCTION SAFETY**

- 9.4.1 Subject to paragraph 3.2.2.2 of CC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

### **PART 10 GOVERNING REGULATIONS**

#### **CC 10.1 TAXES AND DUTIES**

- 10.1.1 All taxes, including but not limited to Value Added Taxes, withholding tax, and income tax, etc., imposed by the government of Canada (federal, provincial and any other level of government) shall be borne by the Owner. All taxes imposed by the government of China shall be borne by the Contractor
- 10.1.2 Any increase or decrease in costs to the Contractor due to changes in such included taxes and duties after the time of signing the Contract shall increase or decrease the Contract Price accordingly.

#### **CC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

- 10.2.1 The laws of the Ontario province of Canada shall govern the Work.
- 10.2.2 The Owner shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the Contract Documents specify as the responsibility of the Contractor.
- 10.2.3 The Contractor shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the Work and customarily obtained by contractors in the jurisdiction of the Place of the Work after the issuance of the building permit. The Contract Price

includes the cost of these permits, licences, inspections, and certificates, and their procurement.

- 10.2.4 The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety.
- 10.2.5 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the Work. If the Contract Documents are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the Contract Documents, the Contractor shall advise the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the Contract Documents as provided in CC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, CC 6.2 - CHANGE ORDER and CC 6.3 - CHANGE DIRECTIVE.
- 10.2.6 If the Contractor fails to advise the Consultant in writing; and fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the Contractor shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of signing the Contract, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the Work, either party may submit a claim in accordance with the requirements of CC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

### CC 10.3 PATENT FEES

- 10.3.1 The Contractor shall pay the royalties and patent licence fees required for the performance of the Contract. The Contractor shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts the Contractor may be liable.
- 10.3.2 The Owner shall hold the Contractor harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the

purpose of the Contract, the model, plan or design of which was supplied to the Contractor as part of the Contract Documents.

#### **CC 10.4 WORKERS' COMPENSATION**

- 10.4.1 Prior to commencing the Work, and on any other occasions as required by the Contract Documents or applicable law, the Contractor shall provide evidence of compliance with workers' compensation legislation at the Place of the Work, including payments due thereunder.
- 10.4.2 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by the Contractor and Subcontractors.

### **PART 11 INSURANCE AND CONTRACT SECURITY**

#### **CC 11.1 INSURANCE**

- 11.1.1 The Owner shall provide, maintain and pay for the Builder's Risk Insurance and Wrap-up Risk Insurance.
- 11.1.2 Said insurances shall be maintained from the Commencement Date of the Contract until the date of Substantial Performance of the Work, after that date, the Owner will provide Property Insurance with the Contractor additionally insured.
- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the Contract.
- 11.1.4 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.

### **PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY**

#### **CC 12.1 INDEMNIFICATION**

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the Owner and the Contractor shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this

Contract, provided such claims are:

.1 caused by:

- (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by Notice in Writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work issued pursuant to paragraph 5.3.2.2 of CC 5.3 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.1 In respect to losses suffered by the Owner and the Contractor for which insurance is to be provided by either party pursuant to CC 11.1 – INSURANCE.

.2 In respect to losses suffered by the Owner and the Contractor for which insurance is not required to be provided by either party in accordance with CC 11.1 – INSURANCE, the greater of the Contract Price as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

12.1.4 The Owner and the Contractor shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in CC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

12.1.5 The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

.1 as described in paragraph 10.3.2 of CC 10.3 – PATENT FEES, and

.2 arising out of the Contractor's performance of the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in

title to the Place of the Work.

12.1.6 In respect to any claim for indemnity or to be held harmless by the Owner or the Contractor:

- .1 Notice in Writing of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

## CC 12.2 WAIVER OF CLAIMS

12.2.1 Waiver of Claims by Owner

As of the date of the expiry of the Contract Time, the Owner expressly waives and releases the Contractor from all claims against the Contractor including without limitation those that might arise from the negligence or breach of contract by the Contractor except one or more of the following:

- .1 those made in writing prior to said date;
- .2 those arising from the provisions of CC 12.1 - INDEMNIFICATION or CC 12.3 - WARRANTY;
- .3 those arising from the provisions of paragraph 9.2.5 of CC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES and arising from the Contractor bringing or introducing any toxic or hazardous substances to the Place of the Work after the Contractor commences the Work;
- .4 those made in writing within a period of 6 years from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work and arising from any liability of the Contractor for damages resulting from the Contractor's performance of the Contract with respect to substantial defects or deficiencies in the Work for which the Contractor is proven responsible. As used herein "substantial defects or deficiencies" mean those defects or deficiencies in the Work which affect the Work to such an extent or in such a manner that a significant part or the whole of the Work is unfit for the purpose intended by the Contract Documents.

12.2.2 Waiver of Claims by Contractor

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As of the date of the expiry of three years' period from the Commencement Date, the Contractor expressly waives and releases the Owner from all claims against the Owner including without limitation those that might arise from the negligence or breach of contract by the Owner except:

- .1 those made in writing prior to said date; and
- .2 those arising from the provisions of CC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES or CC 10.3 - PATENT FEES.

12.2.3 CC 12.2 - WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of CC 1.3 - RIGHTS AND REMEDIES.

### CC 12.3 WARRANTY

- 12.3.1 The warranty period under the Contract is one year from the date of Substantial Performance of the Work.
- 12.3.2 The Contractor shall be responsible for the proper performance of the Work to the extent that the design and Contract Documents permit such performance.
- 12.3.3 The Owner shall promptly give the Contractor Notice in Writing of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the Contractor shall correct promptly, at the Contractor's expense, defects or deficiencies in the Work which appear prior to and during the warranty period.
- 12.3.5 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.

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Attachment 1 of Contract Conditions

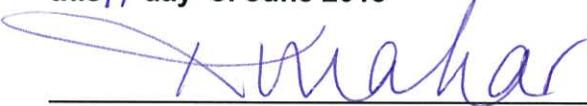
## **DEFERRED PAYMENT SCHEDULE**

### PHILLIP STUDENT RESIDENCE PROJECT PHASE I, IN WATERLOO, CANADA

S/N	Month for Progress Certificate	Amount for Progress Certificate	Month for Progress Payment	Progress Payment
1	7th	USD 72,270,000.00 (90% of the Contract value)	31st	USD 72,270,000.00 (90% of the Contract value)
2	8th		32nd	
3	9th		33rd	
4	10th		34th	
5	11th		35th	
6	12th		36th	
7	13th		37th	
8	14th		38th	
9	15th		39th	
10	16th		40th	
11	17th		41st	
12	18th		42nd	
13	19th		43rd	
14	20th		44th	
15	21st		45th	
16	22nd		46th	
17	23rd		47th	
18	24th		48th	

**Remark:** The actual amount of each payment will subject to progress report. Other payment terms stated in the Part 5 of the Contract Conditions - PAYMENT, which was signed on January 22nd, 2013.

This is Exhibit "C" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVITS



**THE AMENDMENT NO.1**

**To**

**THE CONTRACT**

**FOR**

**PHILLIP STUDENT RESIDENCE PROJECT  
PHASE I  
IN WATERLOO, CANADA**

**BETWEEN**

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**

**AND**

**CHINA MACHINERY ENGINEERING  
CORPORATION**

**Contract No.: JD/CMEC/2013-001**

**30 July, 2013**

*30/07/2013*

*JZ*

## **AMENDMENT No. 1 BETWEEN OWNER AND CONTRACTOR**

This Amendment made on the 30<sup>th</sup> day of July in the year 2013

by and between

JD Development Phillip Street Limited

hereinafter called the "Owner"

and

China Machinery Engineering Corporation

hereinafter called the "Contractor"

WHEREAS, the Owner and the Contractor has signed the Contract for Phillip student residence project phase I in Waterloo, Canada (the Contract No. JD/CMEC/2013-001) on the 22<sup>nd</sup> day of January, 2013 (hereinafter referred as "the Contract") and the Contract needs to be updated and amended before the implementation and execution

NOW, the Owner and the Contractor agree to make this amendment as follows:

1. Replace ARTICLE A-9 EFFECTIVE DATE in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR with the following:

### **"ARTICLE A-9 EFFECTIVE DATE**

9.1 This Contract will come into full force and effectiveness on the date of:

- .1 signing of the Agreement between the Owner and the Contractor;
- .2 receipt of the Deposit by the Contractor;
- .3 written confirmation in which the effective date shall be indicated by the Owner and the Contractor,

whichever is the latest."

2. Replace ARTICLE A-10 COMMENCEMENT DATE in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR with the following:

### **"ARTICLE A-10 COMMENCEMENT DATE**

10.1 The Commencement Date means the date when all the followings are reached:

31/7

JL

.1 this Contract comes into full force and effectiveness; and  
.2 the Contractor receives a Notice to Proceed issued by the Owner; and  
.3 the insurance policy for the Contract issued by China Export & Credit Insurance Corporation come into full force and effectiveness.  
whichever is the latest.”

3. Insert the following at the end of PART5 PAYMENT of the CONTRACT CONDITIONS:

“5.2.8 Payment of an amount certified by a Payment Certificate will not be further affected, disputed or deducted for any reason.”

4. This Amendment constitutes an integral part of the Contract. All other terms and conditions of the Contract, save those altered and changed above, shall remain unchanged. In case of any conflict between the Contract and this Contract Amendment, this Amendment shall prevail.

In witness whereof the parties hereto have signed this Amendment and by the hands of their duly authorized representatives in two (2) original copies in the English language on the date appearing at the beginning. Each party shall hold one (1) original copy.

SIGNED AND DELIVERED

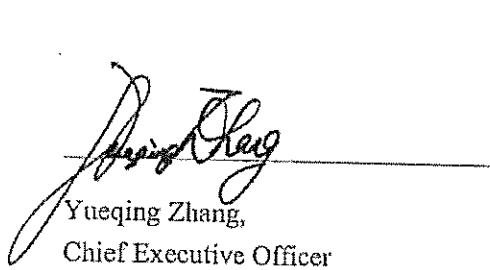
in the presence of:

OWNER

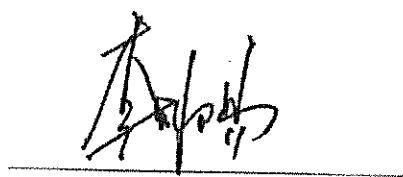
JD Development Phillip Street Limited

CONTRACTOR

China Machinery Engineering Corporation

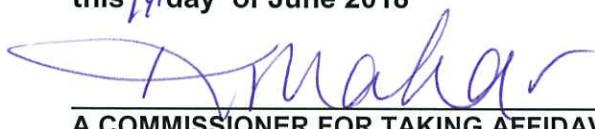


Yueqing Zhang,  
Chief Executive Officer



Li Chaoyang  
Vice President

**This is Exhibit "D" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14 day of June 2018**



A handwritten signature in blue ink, appearing to read "D. Maher", is written over a horizontal line. Below the signature, the text "A COMMISSIONER FOR TAKING AFFIDAVITS" is printed in capital letters.

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## THE AMENDMENT NO.2

To

THE CONTRACT

FOR

PHILLIP STUDENT RESIDENCE PROJECT  
PHASE I  
IN WATERLOO, CANADA

BETWEEN

JD DEVELOPMENT PHILLIP STREET LIMITED

AND

CHINA MACHINERY ENGINEERING  
CORPORATION

AND

CHINA EVERBEST DEVELOPMENT  
INTERNATIONAL LIMITED

Contract No.: JD/CMEC/2013-001-02

31 December, 2013

A handwritten signature in black ink, appearing to read "JD Development Phillip Street Limited". It includes a stylized "J" and "D" at the beginning, followed by the company name.

A handwritten signature in black ink, appearing to read "China Everbest Development International Limited". It includes a stylized "C" and "E" at the beginning, followed by the company name.

## **AMENDMENT No. 2 to the Contract**

This Amendment No.2 made on the 31<sup>st</sup> day of December in the year 2013  
between

JD Development Phillip Street Limited

hereinafter called the "Owner"

and

China Machinery Engineering Corporation

hereinafter called the "CMEC"

and

China Everbest Development International Limited

hereinafter called the "CED"

WHEREAS:

- A. The Owner and the CMEC are parties to the Contract for Phillip Student Residence Project Phase I in Waterloo, Canada (Contract No. JD/CMEC/2013-001), a copy of which is annexed hereto (hereinafter referred as "the Existing Contract");
- B. All parties hereto have agreed that CED shall become a party to the Existing Contract.

NOW, IT IS HEREBY AGREED AS FOLLOWS:

1. After this amendment is singed by all parties, CED shall become a party to the Existing Contract by forming a consortium with CMEC and acting together as the Contractor under the Existing Contract.
2. Delete the last paragraph of ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR of the Existing Contract, and substitute with the following:

"The Contractor at

Name of Contractor:

1

China Machinery Engineering Corporation

Address: No. 178, Guanganmenwai Street, Xicheng District, Beijing, 100055

Faximile number: +86 10 63477491

Email address: zhangxf@mail.cmecc.com

and

China Everbest Development International Limited

Address: FLAT/RM 804, Tower I South Seas Centre 75 Mody Road, Hong Kong

Faximile number: +852 35650839

Email address: ekam03482002@yahoo.com”

3. Add a new Article A-11 to the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR of the Existing Contract:

#### **“ARTICLE A-11 CONSORTIUM**

11.1 Any reference to Contractor or consortium in this Contract is a joint reference to CMEC and CED.

11.2 The CMEC will be responsible in financing aspect to the Project according to the Contract Documents, while the CED will be responsible for design, procurement, construction, completion of the Work and remedy of any defects in the Work and any other obligation of the Contractor in accordance with the Contract Documents.”

4. Add the following to Article A-5 PAYMENT in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR of the Existing Contract:

“5.4 Any payment under this Contract shall be made to accounts designated by CMEC. Before releasing every payment, the Owner shall confirm with CMEC of the account.”

5. This amendment constitutes an integral part of the Existing Contract. All other terms and conditions of the Existing Contract, save those altered and changed above, shall remain unchanged. In case of any conflict between the Existing Contract and this amendment, this amendment shall prevail.

In witness whereof the parties hereto have signed this Amendment and by the hands of their duly authorized representatives in three (3) original copies in the English

language on the date appearing at the beginning. Each party shall hold one (1) original copy.

SIGNED AND DELIVERED

in the presence of:

OWNER

JD Development Phillip Street Limited

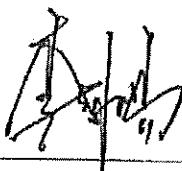


Yueqing Zhang  
Chief Executive Officer

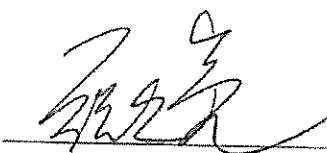
CONTRACTOR

China Machinery Engineering Corporation

China Everbest Development International  
Limited

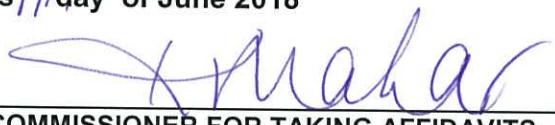


Li Chaoyang  
Vice President



Zhang Zhiliang  
General Manager

This is Exhibit "E" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018



---

A COMMISSIONER FOR TAKING AFFIDAVITS



**THE AMENDMENT NO.3**

**To**

**THE CONTRACT**

**FOR**

**PHILLIP STUDENT RESIDENCE PROJECT  
PHASE I  
IN WATERLOO, CANADA**

**BETWEEN**

**JD DEVELOPMENT PHILLIP STREET LIMITED**

**AND**

**CHINA MACHINERY ENGINEERING  
CORPORATION**

**AND**

**CHINA EVERBEST DEVELOPMENT  
INTERNATIONAL LIMITED**

**Contract No.: JD/CMEC/2013-001-03**

**22 January, 2014**

A handwritten signature in black ink, appearing to read "JD Development Phillip Street Limited".

A handwritten signature in black ink, appearing to read "China Everbest Development International Limited".

## AMENDMENT No. 3 to the Contract

This Amendment No.3 made on the 22<sup>nd</sup> day of January in the year 2014

between

The Owner:

JD Development Phillip Street Limited

hereinafter called the "Owner"

and

The Consortium of China Machinery Engineering Corporation (CMEC) and China Everbest Development International Limited (CED)

hereinafter called the "Contractor"

WHEREAS the Owner and the Contractor has signed the Contract for Phillip Student Residence Project Phase I in Waterloo, Canada (the Contract No. JD/CMEC/2013-001), and the Contract needs to be updated and amended before the implementation and execution

NOW, the Owner and the Contractor agree to make this amendment as follows:

1. Replace Sub-Clause 4.4 of ARTICLE A-4 CONTRACT PRICE in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR with the following:

"4.4 Except otherwise specified in this Contract, the Contract Price shall be made in US Dollars."

2. Replace Sub-Clause 5.1 of ARTICLE A-5 PAYMENT in the AGREEMENT BETWEEN THE OWNER AND CONTRACTOR with the following:

"5.1 A Deposit with amount of ten percent (10%) of the Contract Price shall be provided by the Owner to the Contractor, as one of the conditions to effect the Contract. In the Deposit, an amount of U.S. Dollars Two Million Thirty Thousand Only (\$2,030,000) shall be paid to the Contractor with Canadian Dollars Two Million Two Hundred Thousand Only (C\$ 2,200,000, exchange rate: 1USD = 1.0837 CAD) instead."

3. Replace Sub-Clause 5.2.3 and Sub-Clause 5.2.4 of CC 5.2 PROGRESS PAYMENTS in the PARTS PAYMENT of the CONTRACT CONDITIONS with the following:

"5.2.3 For the monthly Progress Reports of the first three months following the Commencement Date, the Owner shall issue one Progress Certificate to confirm work completed by the Contractor



during said three months on the fifth day of the fourth month.

5.2.4 From the fourth month, the Owner shall issue the Progress Certificate monthly. Within five days after receipt of Progress Report provided by the Contractor, the Owner shall issue corresponding Progress Certificate."

4. This Amendment constitutes an integral part of the Contract. All other terms and conditions of the Contract, save those altered and changed above, shall remain unchanged. In case of any conflict between the Contract and this Contract Amendment, this Amendment shall prevail.

In witness whereof the parties hereto have signed this Amendment and by the hands of their duly authorized representatives in three (3) original copies in the English language on the date appearing at the beginning. Each party shall hold one (1) original copy.

SIGNED AND DELIVERED

in the presence of:

**OWNER**

JD Development Phillip Street Limited



Yueqing Zhang

Chief Executive Officer

**CONTRACTOR**

China Machinery Engineering Corporation

China Everbest Development International  
Limited



Li Chaoyang  
Vice President



Zhang Zhiliang  
General Manager

Attachment 1 of Contract Conditions (Contract No. JD/CMEC/2013-001)

## REVISED DEFERRED PAYMENT SCHEDULE

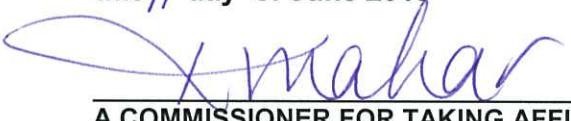
PHILLIP STUDENT RESIDENCE PROJECT PHASE I, IN WATERLOO, CANADA

22 January, 2014

S/N	Month for Progress Certificate	Amount for Progress Certificate	Month for Progress Payment	Progress Payment
1	4th	USD 72,270,000.00 (90% of the Contract value)	28th	USD 72,270,000.00 (90% of the Contract value)
2	5th		29th	
3	6th		30th	
4	7th		31st	
5	8th		32nd	
6	9th		33rd	
7	10th		34th	
8	11th		35th	
9	12th		36th	
10	13th		37th	
11	14th		38th	
12	15th		39th	
13	16th		40th	
14	17th		41st	
15	18th		42nd	
16	19th		43rd	
17	20th		44th	
18	21st		45th	
19	22nd		46th	
20	23rd		47th	
21	24th		48th	

Remark: The actual amount of each payment will subject to progress report. Other payment terms stated in the Part 5 of the Contract Conditions - PAYMENT.

**This is Exhibit "F" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Addendum 1 to Technical Documents  
For  
Phillip Student Residence Project Phase I  
In Waterloo, Canada**

**18 February, 2014**



By and Between,

**JD Development Phillip Street Ltd.**

and

**The Consortium of China Machinery Engineering Corporation (CMEC) &  
China Everbest Development International Ltd. (CED)**

In order to ensure the smooth execution and delivery of the Project in an acceptable quality and standard to the Owner, it is discussed by both Parties that,

Whereas, the Technical Document signed for Building A of Phillip Student Residence Project Phase I to the Contract Agreement (*Contract No.: JD/CMEC/2013-001*), which is being implemented, shall be amended in scope of work as follows.

**It is hereby agreed,**

A. The Part II of the Section 2 “Scope of Work and Principle” in the Chapter 1 of the Technical Documents is modified as follow:

**Part II:** The surface and underground parking areas will contain 134 parking stalls and 108 bicycle parking spaces, which the total GFA of 2,250 square meters, the attached amended drawing A1.3 and data are as follows.

B. The Section 2 “2. Project Statistics” of the Chapter 2 is amended as follow:



	Building A	Underground Parking	Total
Total GFA	18,214 sm	2,250 sm	20,464 sm
Building Height	20 stories	1 storey	
Unit Count	sub-total 3-Bed Unit 4-Bed Unit 5-Bed Unit	total 34 36 36 106	106 units
Bedroom count	426 beds		426 beds
Amenity spaces	629 sm		629 sm
Retail spaces	542 sm		542 sm
Underground Residential Vehicular parking spaces		62 spaces	
Commerical Vehicular parking spaces		41 spaces	134 spaces
Surface Residential Vehicular parking spaces		31 spaces	
Bicycle parking spaces		108 spaces	108 spaces

C. The Part II of Section 4 "Architectural" is amended as follow:

Underground garage contains 62 parking stalls. The basement also includes service rooms such as electrical room, sprinkler room, water meter room, and mechanical shafts.

Finished surface area includes areas to the expansion joint on the east side, to the property lines on the north side and west side, to the mid of property on the south side. Refer to attached drawings – A1.1 & A1.3, for exact extent. Driveways, ramp, stairs, and landscaping are to be finished as per site plan.

D. Both parties agree that the Interior Decoration, Suites, Lobby and Amenity Finishes and Furniture, Fixtures and Appliances of Building A shall be upgraded to high-end condominium quality.

For any discrepancy between this Addendum and the original Technical Documents, both Parties agreed that this Addendum shall prevail.

**IN WITNESS WHEREOF**, the Parties hereto have this Addendum to be executed on the 18<sup>th</sup> day of February, 2014.

On Behalf of **JD Development Phillip Street Ltd**

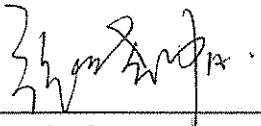
Per:



Name: Yeqing (Julia) Zhang  
Title: CEO

Date: \_\_\_\_\_

On Behalf of **The Consortium of China Machinery Engineering Corporation (CMEC) & China Everbest Development International Ltd. (CED)**

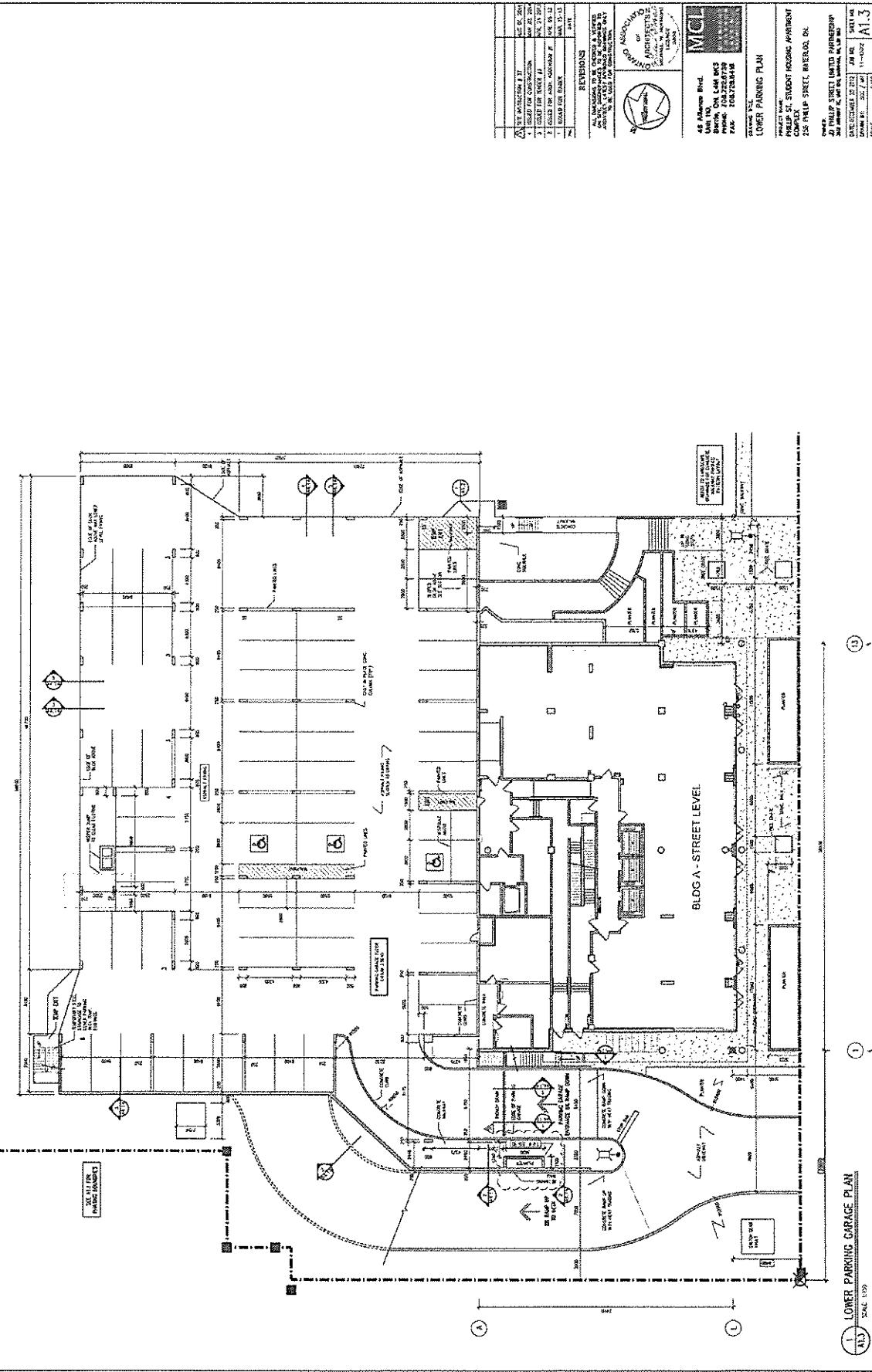


Zhang Xiaofan  
Project Manager

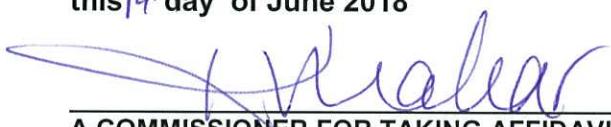


Mi Chuan  
Deputy Project Manager





This is Exhibit "G" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14 day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVITS

## Commitment to Phillip Student Residence Project, Phase I

June 9, 2014

JD Development Phillip Street Limited  
3601 Highway 7 E, Suite 610  
Markham, ON L3R 0M3

Dear Sir/Madam:

Re: Phillip Student Residence Construction Project—256 Phillip Street,  
Waterloo, ON—Phase I (Blair House)

We are pleased to confirm that China Machinery Engineering Corporation ("CMEC") agrees to provide financing for the above noted Project, subject to the following terms and conditions.

Borrower: JD Development Phillip Street Limited

Lender: China Machinery Engineering Corporation

Credit Amount: US\$61,380,000 (Sixty One Million Three Hundred and Eighty Thousand US Dollars) to be advanced and repaid in accordance see, Page 5 with Schedule B

Maturity Date: The second anniversary of the date of the second advance

Interest: 2.9748% per annum

Other Terms: As in the form of Mortgage and Charge attached as Schedule C

### Security:

JD Development Phillip Street Limited ("Owner") will provide the following security for the financing:

1. The Owner will provide a 1<sup>st</sup> position Charge, in the form of Schedule C attached, over the property known as 256 Phillip Street, Waterloo legally described as PT LT 6 SUBDIVISION OF LT 13 GERMAN COMPANY TRACT CITY OF

Tel#: 3023561.6

7/2

7/2

WATERLOO PT 2 58R2778; S/T 1563951,67916, WATERLOO ("Property"). After severance, the owner will provide 1<sup>st</sup> position charge over Building A (Blair House) of Phillip project.

2. General Security Agreement from the Owner providing a first position security interest and charge over the personal property related to the Property in form acceptable to CMEC.
3. An assignment of proceeds of an appropriate insurance policy for the Project, acceptable to CMEC, containing a standard mortgage clause endorsement accompanied by the original or a certificate copy of the relative policies.
4. Guarantee and Postponement of Claim from JD Development Group Inc. in form acceptable to CMEC.

CORP.

Conditions Precedent:

Prior to the advance of funds, the Owner will provide the documents contemplated in Appendix 2 to Schedule C as conditions precedent, including:

1. Confirmation that:
  - a) The property has all the necessary development approvals and is in compliance with all legal and zoning by-law regulations of the area;
  - b) The building lies within the titled lines of the property as confirmed by certificate from a licensed surveyor;
  - c) The soil of the property is suitable for the Project anticipated; and
  - d) All property taxes and any interim installments have been paid.
2. Satisfactory Independent Peer Review Report of existing Appraisal(s) for the Project by a qualified professional, to confirm the reasonableness of the existing reports, and the viability of the Project. The Report will address the historical demand for student housing in the local market place, the estimated time for the Project to stabilize based on proforma rents, market supply, demand conditions and trends.
3. Satisfactory Phase I Environmental Site Assessment addressed to CMEC from an engineer.

We trust you will find the above satisfactory. If the foregoing terms and conditions are acceptable to you, please indicate your agreement by signing and returning the enclosed copy of this letter.

Yours truly,

China Machinery Engineering Corporation

Per:   
I have authority to bind the corporation.

Date: 9th June, 2014

We hereby agree to the terms and conditions of this Letter and acknowledge receipt of a copy of this letter.

JD Development Phillip Street Limited

Per:   
Name: Yueqing (Julia) Zhang  
Title: CEO

Date: June 9, 2014

## SCHEDULE A

### General Terms and Conditions

Each Loan Party agrees to the following additional provisions:

#### Anti-Money Laundering

Each loan party acknowledge that is required to verify and record information regarding the loan parties, their directors, authorized signing officers, shareholders and other persons in control of each loan party. Each loan party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by CMEC or any prospective assignee or other financial institution participating in the loan with CMEC, in order to comply with applicable laws on anti-money laundering and anti-terrorist financing.

#### Confidentiality

The loan parties shall not disclose the contents of this commitment letter to anyone except their professional advisors.

## SCHEDULE B

No int. accrued in June  
as advance made in June 2014.

## Funding Schedule

Currency: US\$

S/N	Date	Advance	Interest Amount (2.9748% Annually)	Number of Months to the Maturity Date	Repayment
1	Feb-14	5,861,900	406,880	28	6,268,780
		TB, note	10		TB, note
2	Jun-14	25,000,000	1,487,377	24	26,487,377
3	Jul-14	5,018,100	286,113	23	5,304,213
4	Aug-14	3,500,000	190,880	22	3,690,880
5	Sept-14	1,000,000	52,058	21	1,052,058
6	Oct-14	1,500,000	74,369	20	1,574,369
7	Nov-14	2,000,000	94,201	19	2,094,201
8	Dec-14	3,000,000	133,864	18	3,133,864
9	Jan-14	2,500,000	105,356	17	2,605,356
10	Feb-15	2,000,000	79,327	16	2,079,327
11	Mar-15	3,000,000	111,553	15	3,111,553
12	Apr-15	3,000,000	104,116	14	3,104,116
13	May-15	4,000,000	128,906	13	4,128,906
14	Jun-15				
15	Jul-15				
16	Aug-15				
17	Sep-15				
18	Oct-15				
19	Nov-15				
20	Dec-15				
21	Jan-15				
22	Feb-16				
23	Mar-16				
24	Apr-16				
25	May-16				
26	Jun-16				
	Total	61,380,000	3,255,000		64,635,000

**This is Exhibit "H" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14 day of June 2018**



---

A. Mahan  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Amendment to Commitment Re Phillip Student Residence Project, Phase I**

May 27, 2015

JD Development Phillip Street Limited  
3601 Highway 7 E  
Suite 610  
Markham, ON L3R 0M3

Dear Sir/Madam:

**Re: Phillip Student Residence Construction Project – 256 Phillip Street, Waterloo, ON – Phase I (Blair House) (the "Project")**

We are pleased to confirm that the commitment letter between China Machinery Engineering Corporation ("CMEC") and JD Development Phillip Street Limited ("Owner") dated June 9, 2014 in respect of the financing for the Project (the "Original Commitment Letter") is hereby amended as follows:

1. The Interest Rate terms as set out on the first page of the Original Commitment Letter at the heading "Interest", are hereby deleted and replaced by "2.9930% per annum, effective from the date of the first advance".
2. The Funding Schedule attached as Schedule B to the Original Commitment Letter is hereby deleted and replaced by the Funding Schedule attached hereto as Schedule A.
3. The Form of Mortgage attached as Schedule C to the Original Commitment Letter is hereby amended as follows:
  - (a) the definition of "Commitment Letter" in Section 1.1 is hereby deleted and replaced by the following:

**""Commitment Letter"** means the commitment letter dated June 9, 2014 between the Mortgagor and the Mortgagee in respect of the Loan, as amended by the Commitment Letter Amending Agreement dated May 27, 2015, and as may be further amended from time to time;"
  - (b) the definition of "Applicable Rate" in Section 1.1 is hereby deleted and replaced with the following:

**""Applicable Rate"** means 2.9930% per annum, calculated yearly not in advance;"
  - (c) the Form of Request For Advance attached as Appendix 2-A is hereby amended by deleting the words in the fourth line commencing with "RE:" and replacing them with the words:

"RE: Advance pursuant to Mortgage and Charge made the 9<sup>th</sup> day of June, 2014,  
as amended from time to time (the "Mortgage")."

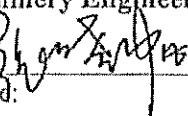
Furthermore, pursuant to the foregoing, the parties shall enter into a Mortgage Amending Agreement in the form of Schedule B hereto and JD Development Group Corp. and CMEC shall enter into a Guarantee and Postponement of Claim amending agreement in the form of Schedule C hereto.

This Amending Agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this Amending Agreement by signing any such counterpart. Each party hereto agrees that a copy of any signature page of this Amending Agreement with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this Amending Agreement on behalf of such party shall constitute all required evidence of the execution and delivery of this Amending Agreement by such party, it being agreed by the parties that execution of this Amending Agreement by facsimile or email is binding.

In all other respects the Original Commitment Letter, as hereby amended remains in full force and effect.

Yours truly,

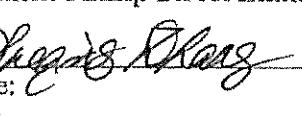
China Machinery Engineering Corporation

Per:  Date: 27<sup>th</sup> May, 2015  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have authority to bind the Corporation.

We hereby agree to the foregoing terms amending the Original Commitment Letter.

JD Development Phillip Street Limited

Per:  Date: May 29, 2015  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have authority to bind the Corporation.

**SCHEDULE A**

**Revised Funding Schedule**

Currency: US\$

S/N	Date	Advance	Interest Amount (2.9930% Annually)	Number of Month	Repayment
1	Feb-14	5,861,900	409,374	28	6,271,274
2	Jun-14	25,000,000	1,496,495	24	26,496,495
3	Jul-14	5,018,100	287,867	23	5,305,967
4	Aug-14	3,500,000	192,050	22	3,692,050
5	Sep-14	1,000,000	52,377	21	1,052,377
6	Oct-14	1,500,000	74,825	20	1,574,825
7	Nov-14	2,000,000	94,778	19	2,094,778
8	Dec-14	3,000,000	134,685	18	3,134,685
9	Jan-15	2,500,000	106,002	17	2,606,002
10	Feb-15	2,000,000	79,813	16	2,079,813
11	Mar-15	3,000,000	112,237	15	3,112,237
12	Apr-15	3,000,000	104,755	14	3,104,755
13	May-15	1,600,000	51,878	13	1,651,878
14	Jun-15	400,000	11,972	12	411,972
15	Jul-15	400,000	10,974	11	410,974
16	Aug-15	400,000	9,977	10	409,977
17	Sep-15	400,000	8,979	9	408,979
18	Oct-15	800,000	15,963	8	815,963
19	Nov-15				
20	Dec-15				
21	Jan-16				
22	Feb-16				
23	Mar-16				
24	Apr-16				
25	May-16				
26	Jun-14				
	<b>Total</b>	61,380,000	3,255,000		64,635,000

**SCHEDULE B**  
**AMENDMENT TO MORTGAGE AND CHARGE**

**THIS AMENDING AGREEMENT** made as of the 27<sup>th</sup> day of May, 2015  
BETWEEN:

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**, a corporation existing under the laws of  
the Province of Ontario,

(hereinafter referred to as the "Mortgagor")

- and -

**CHINA MACHINERY ENGINEERING  
CORPORATION**, a corporation existing under the  
laws of the People's Republic of China,

(hereinafter referred to as the "Mortgagee")

**WITNESSES THAT:**

**WHEREAS** the Mortgagor and the Mortgagee entered into a Mortgage and Charge made as of the 9<sup>th</sup> day of June, 2014 in respect of the premises municipally known as 256 Phillip Street, Waterloo, Ontario, which was registered on title to such property as Instrument No. WR820800 on June 10, 2014 (the "Mortgage");

**AND WHEREAS** the Mortgagor and the Mortgagee wish to amend the terms of the Mortgage;

**AND WHEREAS** capitalized terms herein have the respective meanings given thereto in Section 1.1 of the Mortgage, unless the context otherwise requires;

**NOW THEREFORE** in consideration of two dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1**  
**AMENDMENTS**

**1.1           Definitions**

With respect to the following definitions in Section 1.1:

(a) the definition of "Applicable Rate" is hereby deleted and replaced with the following:

"**Applicable Rate**" means 2.9930% per annum, calculated yearly not in advance";

(b) the definition of "Commitment Letter" is hereby deleted and replaced with the following:

"**Commitment Letter**" means the commitment letter dated June 9, 2014, between the Mortgagor and the Mortgagee in respect of the Loan, as amended by the Commitment Letter Amending Agreement dated May 27, 2015, and as may be further amended from time to time;".

## **1.2        Request for Advance**

The form of Request For Advance attached as Appendix 2-A is hereby amended by deleting the words in the fourth line commencing with "RE" and replacing them with the words:

"RE: Advance pursuant to Mortgage and Charge made the 9<sup>th</sup> day of June, 2014, as amended from time to time (the "**Mortgage**")".

## **ARTICLE 2 GENERAL**

### **2.1        Counterparts**

This Amending Agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this Amending Agreement by signing any such counterpart. Each party hereto agrees that a copy of any signature page of this Amending Agreement with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this Amending Agreement on behalf of such party shall constitute all required evidence of the execution and delivery of this Amending Agreement by such party, it being agreed by the parties that execution of this Amending Agreement by facsimile or email is binding.

### **2.2        Full Force and Effect**

The Mortgage, as amended by this Amending Agreement remains in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement.

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**

By \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**CHINA MACHINERY ENGINEERING  
CORPORATION**

By \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**SCHEDULE C**  
**AMENDMENT TO GUARANTEE AND POSTPONEMENT OF CLAIM**

**THIS AMENDING AGREEMENT** made as of the 27<sup>th</sup> day of May, 2015  
BETWEEN:

**JD DEVELOPMENT GROUP CORP.**, a  
corporation existing under the laws of the Province  
of Ontario,

(hereinafter referred to as the "Guarantor")

- and -

**CHINA MACHINERY ENGINEERING  
CORPORATION**, a corporation existing under the  
laws of the People's Republic of China,

(hereinafter referred to as the "Holder")

**WITNESSES THAT:**

**WHEREAS** the Guarantor provided the Holder with a Guarantee and Postponement of Claim dated the 9<sup>th</sup> day of June, 2014 in respect of the Phillip Student Residence Project Phase I (the "Project") in Waterloo, Canada (the "Guarantee");

**AND WHEREAS** the Guarantor and the Holder wish to amend the terms of the Guarantee;

**AND WHEREAS** capitalized terms herein have the respective meanings given thereto in the Guarantee, unless the context otherwise requires;

**NOW THEREFORE** in consideration of two dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1**  
**AMENDMENTS**

**1.1      Contract**

The words in the sixth and seventh lines of the first paragraph of Part I of the Guarantee are hereby deleted and replaced with the following:

"being a Commitment Letter between the Owner and the Holder dated June 9, 2014 in respect of the Phillip Street Student Residence Project Phase I in Waterloo, Canada, as the same may be amended or replaced from time to time (the "Contract"), Indebtedness is".

**1.2           Rate of Interest**

The words in the seventh line of Part I of the Guarantee are hereby deleted and replaced with the following:

"The rate of interest shall be as set out in the first page of the Commitment Letter, being 2.9930% per annum".

**ARTICLE 2  
GENERAL**

**2.1           Counterparts/Facsimile**

This amending agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this amending agreement by signing any such counterpart. A copy of the signature page of this amending agreement with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this amending agreement on behalf of the Guarantor shall constitute all required evidence of the execution and delivery of this amending agreement by such party, it being agreed that execution of this amending agreement by facsimile or email is binding.

**2.2           Full Force and Effect**

The Guarantee, as amended by this amending agreement remains in full force and effect.

IN WITNESS WHEREOF this amending agreement is hereby duly executed.

**JD DEVELOPMENT GROUP CORP.**

by \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/we have authority to bind the corporation.

**CHINA MACHINERY ENGINEERING  
CORPORATION**

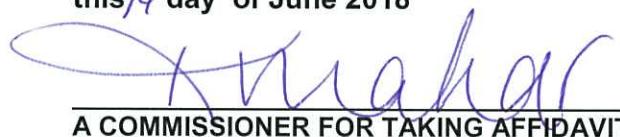
By \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**This is Exhibit "I" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
**A COMMISSIONER FOR TAKING AFFIDAVIT**

**Properties**

*PIN* 22365 - 0208 LT *Interest/Estate* Fee Simple  
*Description* PT. LOT 6 SUBDIVISION LOT 13 GERMAN COMPANY TRACT, BEING PTS. 1 & 2 ON 58R-17722, S/T EASEMENT OVER PT. 2 ON 58R-17722 AS IN 671916, S/T EASEMENT OVER PTS. 1 & 2 ON 58R-17722 AS IN 1563951; CITY OF WATERLOO  
*Address* 256 PHILLIP STREET  
WATERLOO

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* JD DEVELOPMENT PHILLIP STREET LIMITED  
*Address for Service* 3601 Highway 7 East  
Suite 610  
Markham, ON L3R 0M3

I, Yueqing Zhang, Chief Executive Officer, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Chargee(s)****Capacity****Share**

*Name* CHINA MACHINERY ENGINEERING CORPORATION  
*Address for Service* No. 178, Guanganmenwai Street,  
Xicheng District, Beijing, 100055  
Attention: Zhang Xiaofan

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$61,380,000.00 *Currency* US  
*Calculation Period* annually, not in advance  
*Balance Due Date*  
*Interest Rate* 2.9748% per annum  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms*  
*Insurance Amount* full insurable value  
*Guarantor*

**Additional Provisions**

See Schedule A

**Signed By**

Donald Charles Stanbury 155 Wellington Street West  
Toronto  
M5V 3J7 acting for Chargor Signed 2014 06 10  
(s)

Tel 416-863-0900

Fax 416-863-0871

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

DAVIES WARD PHILLIPS & VINEBERG LLP	155 Wellington Street West Toronto M5V 3J7	2014 06 10
Tel	416-863-0900	
Fax	416-863-0871	

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Chargee Client File Number: 244673

SCHEDULE A

MORTGAGE AND CHARGE

THIS MORTGAGE AND CHARGE made as of the 4<sup>th</sup> day of June, 2014.

BETWEEN:

JD DEVELOPMENT PHILLIP STREET  
LIMITED, a corporation existing under the laws of  
the Province of Ontario,

(hereinafter referred to as the "Mortgagor")

- and -

CHINA MACHINERY ENGINEERING  
CORPORATION, a corporation existing under the  
laws of the People's Republic of China,

(hereinafter referred to as the "Mortgagee")

WITNESSES THAT:

WHEREAS the capitalized terms herein have the respective meanings given thereto in Section 1.1 hereof unless the context otherwise requires;

AND WHEREAS, as continuing security for the payment and performance of the Obligations, the Mortgagor has agreed to mortgage and charge the Property in favour of the Mortgagee and has also agreed that such security shall remain in full force and effect at all times when any of the Obligations remain outstanding or unfulfilled;

NOW THEREFORE in consideration of two dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

In this Mortgage, unless there is something in the subject matter or context inconsistent therewith:

"Advance" means any one of the First Advance, the Second Advance, a Subsequent Advance;

"Affiliate" has the meaning ascribed thereto in the *Ontario Business Corporations Act*;

"Applicable Laws" means all applicable laws, statutes, regulations and by-laws and all judgments, decrees and orders of all Governmental Authorities, courts, arbitrators and commissions having jurisdiction;

"Applicable Rate" means 2.9748% per annum, calculated yearly not in advance;

"Budget" means the budget for the construction of the Improvements and the development of the Property, as approved by the Mortgagee as of the date hereof, as the same may be modified or amended from time to time with the prior written approval of the Mortgagee;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Commitment Letter" means the commitment letter dated June 9, 2014 between the Mortgagor and the Mortgagee in respect of the Loan;

"Construction Contract" means the construction contract for the Improvements, that is in place as of the date hereof, as the same may be amended from time to time with the prior written approval of the Mortgagee;

"Construction Costs" means the direct, arm's length costs of constructing the Improvements pursuant to the Construction Contract;

"Consultant" has the meaning ascribed thereto in the Construction Contract;

"Construction Schedule" means the schedule for the construction of the Improvements and the development of the Property, as determined by the Mortgagor and updated from time to time with the concurrence of the Mortgagee;

"Contractor" has the meaning ascribed thereto in the Construction Contract;

"Cure Period" means, in the case of a monetary default under the Obligations, the period of fifteen (15) days after the Mortgagee gives the Mortgagor notice of such default and, in the case of a non-monetary default under the Obligations, the period of thirty (30) days after the Mortgagee gives the Mortgagor notice of such default or if such non-monetary default is not reasonably capable of being remedied within such period of thirty (30) days, then such longer period as is reasonably necessary to remedy such default, provided that the Mortgagor begins to remedy it within such thirty (30) day period and thereafter proceeds diligently to complete the remedying thereof;

"Discharge" has the meaning ascribed to it in Section 10.2;

"Event of Default" means each of the following events:

- (a) the non-payment by the Mortgagor of any amount owing as part of the Obligations which is not cured within the Cure Period;
- (b) the breach or failure of the Mortgagor to observe or perform any non-monetary covenant, provision or other obligation forming part of the Obligations which is not cured within the Cure Period;
- (c) the commencement of proceedings for the dissolution, liquidation or winding-up of the Mortgagor unless being actively and diligently contested by the Mortgagor in good faith;
- (d) if the Mortgagor ceases or threatens to cease carrying on its business or makes or agrees to make a bulk sale of its assets or if the Mortgagor is adjudged or declared bankrupt or insolvent (pursuant to the *Bankruptcy Act*) or makes an assignment for the benefit of creditors (other than as part of the Security), petitions or applies for the appointment of a receiver or trustee or person with similar powers for it or for any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement, (other than a reorganization or arrangement made in the ordinary course of business and not with a view to an attempt to avoid default under any outstanding obligations) readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding commenced against it or against any substantial or material part of its property, or if any such receiver or trustee is appointed;
- (e) if a writ of execution or attachment or similar process is issued or levied against all or a material portion of the Property in connection with any judgment against the Mortgagor and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within sixty (60) days after its entry, commencement or levy; or

- (f) if an encumbrancer or lien claimant takes possession of all or any substantial part of the Property, or if execution or other similar process is enforced against the Property and remains unsatisfied for such period as would permit the Property to be sold thereunder, less five (5) Business Days;

"First Advance" has the meaning ascribed to it in Section 4.1;

"General Security Agreement" means the General Security Agreement dated June 9th, 2014 between the Mortgagor and the Mortgagee which, among other things, gives the Mortgagee a security interest in certain personal property pertaining to the Property, as security for the Obligations, as the same may be amended from time to time;

"Governmental Authorities" means any government (including federal, provincial or municipal governments), legislature, regulatory authority, agency, commission, department, board or court or other law, regulation or rule-making entity having jurisdiction;

"Guarantee and Postponement of Claim" means the Guarantee and Postponement of Claim dated June 9th, 2014 from the Guarantor to the Mortgagee in respect of, among other things, the Obligations, as the same may be amended from time to time;

"Guarantor" means JD Development Group Corp.;

"Hazardous Substance" means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may, based upon reasonably authoritative information then available concerning such substance, immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing:

- (a) any such substance as defined or designated under any applicable laws and regulations for the protection of the environment or any living thing;
- (b) asbestos, urea formaldehyde, poly-chlorinated biphenyl (PCB) and materials manufactured with or containing the same; and
- (c) radioactive and toxic substances;

"Improvements" means the buildings, structures and improvements for the Phillip Street Student Residence Project, Phase 1, as constructed or erected on a portion of the Lands by or on behalf of the Mortgagor, intended by the Mortgagor to be registered as a condominium, and all appurtenances pertaining thereto, together with all personal property, equipment and chattels hereafter affixed to such lands, buildings, structures or improvements (excluding rental equipment and all buildings, structures, improvements, personal property, equipment and chattels owned by lessees of such lands or other third parties);

"Lands" means the lands municipally known as 256 Phillip Street, Waterloo, Ontario, as more particularly described in Appendix 1 hereto;

"Leases" means all leases, offers to lease, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof and all related security and other deposits;

"Loan" means the financing provided for hereunder and under the Commitment Letter, constituting the First Advance, the Second Advance and all Subsequent Advances, intended to aggregate in a principal amount of Sixty One Million, Three Hundred and Eighty Thousand United States Dollars (US\$61,380,000.00);

"Maturity Date" means the second anniversary of the Second Advance Date, as it may be extended pursuant to Section 2.4;

"Mortgage" means this Mortgage and Charge and all schedules hereto, as the same may be amended, restated, amended and restated, modified or supplemented from time to time;

"Obligations" means all present and future indebtedness, liabilities and obligations (whether direct, indirect, absolute, contingent or otherwise and whether in respect of principal or interest thereon) of the Mortgagor (and the Affiliates of each Person comprising the Mortgagor) to the Mortgagee existing at any time, or from time to time, under this Mortgage and any other agreement between the Mortgagor, or an Affiliate of the Mortgagor, and the Mortgagee, or an Affiliate of the Mortgagee in respect of the Property, including the obligation to pay the principal outstanding on the Loan, intended to be up to Sixty One Million, Three Hundred and Eighty Thousand United States Dollars (US\$61,380,000.00) together with accrued interest thereon at the Applicable Rate, anticipated to be approximately Three Million, Two-Hundred and Fifty-Five Thousand United States Dollars [(US\$3,255,000.00)] at the Maturity Date;

"Permitted Encumbrances" means, as of any particular time, any of the following:

- (a) reservations, limitations, provisos and conditions expressed in any original grants from the Crown;
- (b) an easement in favour of Bell Canada registered as Instrument No. 671916;
- (c) an easement in favour of Rogers Cable Inc. registered as Instrument No. 1563951;
- (d) easements, rights-of-way, rights in the nature of an easement, reservations, encroachments, restrictions, permits, licences, agreements, condominium documents, cost share agreements and other similar rights that are required in order to carry out the construction of the Improvements or the operation of the Property and that have been approved by the Mortgagee, provided that the obligations of the Mortgagor thereunder, if any, are complied with in all material respects;

"Person" means an individual, partnership, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, pension fund, Mortgagee, trust company, loan company, insurance company, land trust, business trust or other organization, whether or not legal entities, and government and agency and any political subdivision thereof;

"Plans and Specifications" means the plans and specifications for the Improvements as approved by the Mortgagee as of the date hereof, as the same may be amended from time to time with the prior written approval of the Mortgagee;

"Property" means the Lands and all Improvements on or in the Lands at any time or from time to time;

"Request for Advance" has the meaning ascribed thereto in Subsection 1.1(b) of Appendix 2;

"Receiver" has the meaning ascribed to it in Subsection 7.1(f);

"Second Advance" has the meaning ascribed to it in Section 4.2;

"Second Advance Date" has the meaning ascribed to it in Subsection 1.1(a) of Appendix 2;

"Security" means this Mortgage, the General Security Agreement, the Guarantee and Postponement of Claim, and such other security as the Mortgagee may obtain from time to time pursuant hereto in respect of the Obligations;

"Subsequent Advance Date" has the meaning ascribed to it in Section 2.1 of Appendix 2;

"Subsequent Advances" has the meaning ascribed to it in 4.3; and

"Substantial Completion" in respect of a Construction Contract means that the work to be undertaken pursuant to such Construction Contract has been "substantially performed" within the meaning of such term as defined in the *Construction Lien Act* (Ontario).

**1.2      References**

Except as otherwise specifically indicated, all references to Article, Section and Subsection numbers refer to Articles, Sections and Subsections of this Mortgage, and all references to schedules refer to the schedules attached hereto. The words "herein", "hereof", "hereunder", "hereinafter" and words of similar import refer to this Mortgage as a whole and not to any particular Article, Section or Subsection hereof.

**1.3      Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and *vice versa* and words importing gender include all genders.

**1.4      Headings**

The headings of any Article, Section or part thereof are inserted for purposes of convenience only and do not form part hereof.

**1.5      Severability**

To the extent permitted by law, if any provision herein is determined to be void, voidable or unenforceable, in whole or in part, such determination shall not affect or impair or be deemed to affect or impair the validity of any other provision hereof and all the provisions hereof are hereby declared to be separate, severable and distinct.

**1.6      Effective Date**

This Mortgage shall take effect upon execution and delivery of this Mortgage by the parties hereto, whether or not there are any Obligations at such time.

**1.7      Currency**

Unless otherwise specified in this Mortgage, all dollar references in this Mortgage are expressed in United States dollars. The Mortgagor shall bear the risk of all fluctuations in the exchange rate between the United States dollar and the Canadian dollar and all other costs of, or in any way associated with, conversion from one currency to the other.

**ARTICLE 2**

**PAYMENT**

**2.1      Repayment**

The principal amount outstanding on the Loan, intended to be up to Sixty One Million, Three Hundred and Eighty Thousand United States Dollars (US\$61,380,000.00), together with accrued interest thereon at the Applicable Rate, intended to be approximately Three Million, Two Hundred and Fifty-Five Thousand United States Dollars (US\$3,255,000.00), shall be paid in accordance with the terms of the Commitment Letter and shall be paid in full on the Maturity Date and any other Advances hereunder, together with interest at the Applicable Rate, fees, and all other amounts payable hereunder which have not previously been paid, shall be paid in full on the Maturity Date. All amounts received on the Maturity Date by the Mortgagor shall be applied firstly in payment of outstanding interest under the Loan, secondly shall be applied to reduce the principal amount outstanding under the Loan and thirdly shall be applied to any other amounts outstanding under the Loan or hereunder.

2.2      Interest

All Advances and other amounts outstanding under the Loan shall bear interest at the Applicable Rate, as well after as before maturity and both before and after default, computed from the specific date of the Advance in question or on the date such other amount first became outstanding under the Loan and shall become due and shall accrue and be paid in full on the Maturity Date.

2.3      Prepayment

The Loan may be prepaid, either in whole or in part, before the Maturity Date, on twenty (20) days' prior notice, provided that, and only if, the Mortgagor shall also pay, concurrently with, or prior to, such prepayment all of the interest that then has accrued hereunder at the Applicable Rate and that will thereafter accrue hereunder at the Applicable Rate to the Maturity Date. In any such case, the minimum amount of interest to be paid by the Mortgagor in such circumstances shall be Three Million, Two Hundred and Fifty-Five Thousand United States Dollars (US\$3,255,000.00).

2.4      Extension of Maturity Date

The Mortgagor may, on at least ninety (90) days' prior notice, seek the approval of the Mortgagee to an extension of the Maturity Date for up to one hundred and eighty (180) days. In the event that such approval is given by the Mortgagee, the Maturity Date shall be extended to the date agreed to.

## ARTICLE 3

### SECURITY

3.1      Mortgage

As continuing security for the due payment and performance of the Obligations, the Mortgagor does hereby create a security interest in, and grant, mortgage, assign, transfer and charge as and by way of a fixed and specific mortgage, charge and assignment to and in favour of the Mortgagee of its right, title and interest, both present and future:

- (a) in and to the Property;
- (b) in and to all rights-of-way, easements, franchises and privileges, appurtenant or appertaining to the above;
- (c) in and to any and all leases and licences to occupants of the Property (including the benefit of any guarantees or indemnities relating thereto) and all rights and benefits to be derived therefrom and all rents and other moneys payable thereunder;
- (d) in and to all other revenues, income profits and receipts (including, without limitation, insurance proceeds, expropriation and like awards) from, in respect of or which relate to the Property;
- (e) in and to all agreements in respect of the construction, development, operation or use of the Property and all rights and benefits to be derived therefrom and all moneys payable thereunder.

3.2      Continuing Security

This Mortgage is continuing security for the due payment and performance of the Obligations, as they are constituted at any time and from time to time; provided that nothing herein contained shall in any way restrict, affect or prejudice other rights, remedies and recourses of the Mortgagee in respect of the Obligations, or any breach by the Mortgagor in the due payment and performance thereof. This Mortgage shall continue in full force and effect and shall be operative at all times notwithstanding that the amount payable by the Mortgagor as of the date hereof or at any time hereafter, may be or become zero and whether or not there are any Obligations payable or otherwise outstanding as of the applicable time.

3.3 Last Day of Leases

The last day of any term reserved by any Lease now held or hereafter acquired by the Mortgagor is hereby excepted out of this Mortgage and the same shall be deemed to be a charge by way of sublease provided that the Mortgagor shall stand possessed of such last day in trust for the benefit of the Mortgagee. The Mortgagor shall assign and dispose of the same in such manner as the Mortgagee may from time to time direct in writing without cost or expense to the Mortgagee. Upon any sale, assignment, sublease or other disposition of such Lease, the Mortgagor shall, for the purpose of vesting the aforesaid residue of any such term in any purchaser, assignee, sublessee or such other acquirer of the Lease, be entitled by deed or other written instrument to assign to such other person, the aforesaid residue of any such term in place of the Mortgagor and to vest the same freed and discharged from any obligation whatsoever respecting the same.

ARTICLE 4

ADVANCES

4.1 First Advance

The Mortgagee has loaned to the Mortgagor, on the 29<sup>th</sup> day of January, 2014, as the first advance (the "First Advance") under the Loan, the amount of US\$5,831,900.00, and interest is accruing thereon at the Applicable Rate and is payable in accordance with the terms of this Mortgage as and from such date.

4.2 Second Advance

The Mortgagee shall be entitled to obtain the second advance (hereinafter called, the "Second Advance") under the Loan upon, and only in compliance with the Second Advance requirements as set out in Appendix 2.

4.3 Subsequent Advances

The Mortgagor shall be entitled to obtain subsequent advances (herein called "Subsequent Advances") under the Loan upon, and only in compliance with the Subsequent Advance requirements as set out in Appendix 2.

4.4 Advance Payments

The proceeds of the Second Advance and Subsequent Advances shall be paid to the Mortgagor by way of the wiring of funds to a specific trust account established by the Mortgagor with a Canadian chartered bank, in accordance with wiring instructions to be communicated in writing by the Mortgagor to the Mortgagee, provided that, in respect of Subsequent Advances, the Mortgagee may, upon the direction of the Mortgagor, pay all or part of such proceeds directly to a third party to whom Construction Costs are owed.

4.5 Suspension of Advance

If the construction of the Improvements has been suspended for more than 10 days, as confirmed by the Consultant, the Mortgagor shall not be entitled to obtain any Subsequent Advance until resumption of construction of the Improvements.

ARTICLE 5

POSITIVE COVENANTS

5.1 Payments

The Mortgagor shall duly and punctually pay to the Mortgagee all principal, interest and other amounts payable by it hereunder and under the Loan when due.

**5.2        Corporate Existence**

The Mortgagor shall maintain in good standing its corporate existence under the laws of Ontario.

**5.3        Compliance with Laws**

The Mortgagor shall comply, in all material respects, with all applicable laws, rules, regulations and orders in respect of the Property, such compliance to include, without limitation, paying when due all taxes, assessments and governmental charges or levies imposed upon the Property or upon it in respect of the Property, except to the extent contested in good faith. The Mortgagor shall, upon request from the Mortgagee, provide evidence of payment of all such taxes, assessments, charges and levies.

**5.4        Property Information**

In addition to the documentation to be provided to the Mortgagee as part of each Request for Advance, the Mortgagor shall, on the request of the Mortgagee, provide to the Mortgagee periodic reports on the progress of the construction of the Improvements. Such reports shall contain such information as is requested by the Mortgagee, acting reasonably. In addition, the Mortgagor will make its personnel available to discuss with the Mortgagee, upon reasonable prior notice to the Mortgagor, the affairs, finances and accounts relating to the Property, at such reasonable times and as often as the Mortgagee may reasonably request.

**5.5        Property Completion**

The Mortgagor shall diligently carry out, or cause to be carried out, the construction of the Improvements and the development of the Property in accordance with the Plans and Specifications and in accordance with all development and construction agreements related thereto, subject to such amendments thereto as the Mortgagor may consider necessary and the Mortgagee has approved, acting reasonably, and to complete such construction and development by no later than the date identified for such completion in the Construction Schedule.

**5.6        Construction Cost Overruns**

The Mortgagor shall promptly fund, at its own cost and expense, all cost overruns in excess of the Budget amounts identified for Construction Costs, as soon as such overruns have been identified.

**5.7        Hazardous Substances**

The Mortgagor represents, warrants, covenants and agrees that;

- (a) it has not and, to the best of its knowledge, information and belief after making due inquiry, no other person has caused or permitted any Hazardous Substance to be placed, stored, located or disposed of on, under or at the Lands;
- (b) it and its tenants, invitees and other occupiers of the Lands have and will at all times and, to the best of its knowledge, information and belief after making due inquiry, all prior owners and occupiers of the Lands have at all times carried out all business and other activities upon the Lands in compliance with all applicable laws intended to protect the environment including, without limitation, laws respecting the discharge, emission, spill or disposal of any Hazardous Substance;
- (c) no order, direction, enforcement action or other governmental or regulatory action or notice, nor any action, suit or proceeding relating to any Hazardous Substance or the environment has been issued or is otherwise threatened or pending with respect to the Lands;
- (d) each of the representations and warranties set out herein shall remain true and accurate in all respects until all amounts secured hereunder are paid in full; and

- (e) the Mortgagee may delay or refuse to make any advance to the Mortgagor if the Mortgagee believes that any of the representations and warranties set out herein were not true and accurate when made or at any time thereafter.

The Mortgagor shall permit the Mortgagee to conduct, at the Mortgagor's expense, any and all tests, inspections, appraisals and environmental audits of the Lands so as to determine and ensure compliance with the provisions of this Section including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Lands or the businesses and other activities conducted thereon at any time and from time to time.

The Mortgagor agrees to indemnify and save harmless the Mortgagee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of any and every nature and kind whatsoever which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of:

- (a) a breach of any of the representations, warranties or covenants hereinbefore set out;
- (b) the presence of any Hazardous Substance in, on or under the Lands; or
- (c) the discharge, emission, spill or disposal of any Hazardous Substance from the Lands into or upon any land, the atmosphere, any watercourse, body of water or wetland,

and the provisions of all representations, warranties, covenants and indemnifications set out herein shall survive the release and discharge of this Mortgage and repayment and satisfaction of the Loan.

#### 5.8 Insurance

The Mortgagor shall obtain and maintain, or shall cause to be obtained and maintained, general liability insurance, "broad form" property insurance, boiler and machinery insurance and such other insurance as the Mortgagee reasonably requires in respect of the Property, showing the Mortgagee as a named insured.

Such insurance shall show the Mortgagee as the loss payee as its interest may appear. All insurance shall be in amounts, on terms and in form and substance acceptable to the Mortgagee and written by companies approved by the Mortgagee from time to time. The Mortgagor shall deliver certified copies, signed by the applicable insurers, of all policies of insurance required hereunder to the Mortgagee before the Second Advance Date and thereafter the Mortgagor shall provide to the Mortgagee true copies or certificates of such insurance from time to time as required by the Mortgagee. All insurance policies herein provided for shall contain provisions that they will not in any event be reduced in coverage, cancelled, materially modified or be allowed to lapse without at least sixty (60) days prior notice being given by the insurer(s) to the Mortgagee, evidence of the giving of such notice to be the responsibility of the insurer(s) in each case. Regardless of the types or amounts of insurance required hereunder and approved by the Mortgagee, except for the general liability insurance, the Mortgagor shall assign and deliver to the Mortgagee, as first loss payee, the proceeds of all policies of insurance which insure against any property loss or damage to the Property.

### ARTICLE 6

#### NEGATIVE COVENANTS

##### 6.1 Further Mortgaging, etc.

The Mortgagor will not create, assume or permit to exist any mortgage, hypothec, pledge, lien or other encumbrance or security interest with respect to any the Property or any part thereof other than Permitted Encumbrances and the Security, without the prior written consent of the Mortgagee.

6.2        Transfers

Other than in accordance with this Mortgage, the Mortgagor may not sell or dispose of all or any part of the Property without the prior written consent of the Mortgagee.

6.3        Change of Control

There shall not be, nor shall the Mortgagor permit, any issue or any transfer by sale, assignment, operation of law or other disposition, by issue, subscription, allotment, cancellation or redemption, of all or any part of the shares of the Mortgagor or any parent or subsidiary corporation of the Mortgagor (as those terms are used within the meaning of the *Business Corporations Act* (Ontario) and amendments thereto), having voting rights, whether contingent or direct, nor permit any reorganization or amalgamation in any such case so as to result in any change in the present effective voting control of the Mortgagor from the person or persons holding such voting control at the date of execution of this Agreement (although the effective voting control may vary among those persons holding such voting control at the date of execution of this Agreement) without first obtaining the written consent of the Mortgagee in each instance, which consent shall not be unreasonably withheld (provided that the Mortgagee is satisfied as to the reputation and creditworthiness of such persons obtaining effective voting control of the Mortgagor), notwithstanding any statutory provision or provisions to the contrary. There shall not be deemed to be a change in this present effective voting control if the shares of the Mortgagor are beneficially owned by (a) a company controlled by the Person who beneficially owns such shares at the date of execution of this Agreement or (b) an affiliate (as defined in the *Ontario Business Corporations Act*) of such company. Any subsequent change in control shall similarly be subject to the prior written consent of the Mortgagee. The Mortgagor shall make available to the Mortgagee or its lawful representatives, all corporate books and records of the Mortgagor for inspection at all reasonable times during business hours, in order to ascertain whether there has been any change in control.

6.4        No Amendments

The Mortgagor shall not make any material amendments or other changes to or terminate any agreement affecting the Property or the Security in a manner which would materially adversely affect the interest of the Mortgagee hereunder or under the Security, in each case, without the prior written consent of the Mortgagee.

## ARTICLE 7

### REMEDIES ON DEFAULT

7.1        Remedies on Default

If an Event of Default has occurred and is continuing, then at any time thereafter, in addition to any rights prescribed by law:

- (a) the Mortgagee may proceed to exercise any and all rights hereunder;
- (b) the Mortgagee may, at the expense of the Mortgagor, when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed any such covenant, agreement, proviso or stipulation, and the reasonable cost thereof, with interest thereon at the Applicable Rate until paid, shall immediately become due from the Mortgagor to the Mortgagee forthwith after demand by the Mortgagee upon the Mortgagor therefor;
- (c) the Mortgagee may, upon thirty (30) days' notice to the Mortgagor, enter into possession of the Property or any part thereof and whether in or out of possession collect the rents, issues and profits thereof, and make any demise or lease or sublease of the Property, or any part thereof, for such terms and periods and at such rents and upon such conditions as shall appear to the Mortgagee most advantageous and as can reasonably be obtained therefor in the circumstances and the power of sale hereunder may be exercised either before or after and subject to any such demise, lease or sublease;



- (d) it shall be lawful for and the Mortgagor hereby grants full power, right and license to the Mortgagee to, upon thirty (30) days' notice to the Mortgagor, enter, and to seize and distrain upon, the Property, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of a demise of the Property, as much of the monies secured hereby as shall from time to time be or remain in arrears or unpaid, together with all costs, charges or expenses attending such levy or distress, as in like cases of distress for rent;
- (e) the Mortgagee, on default of payment of any of the Obligations for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose of the Property, or any part thereof, with or without entering into possession of same and with notice to such Persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be restored to all rights, powers and privileges granted or conferred upon the Mortgagee under and by virtue of any statute or by this Mortgage may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Property; and the Mortgagee may sell, transfer and convey the Property, or any part, thereof on such terms and on credit or for part cash and part credit, (provided the Mortgagor shall not be accountable for any default in respect of the credit) secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Mortgagee most advantageous, and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Mortgagee is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Property to satisfy any amount or amounts that have become due and payable hereunder, leaving the unpaid balance of the indebtedness to run with interest at the Applicable Rate; and the Mortgagee may make any stipulations as to title or evidences or commencement of title or otherwise as the Mortgagee shall deem proper and may buy in or rescind or vary any contract for sale; and on any sale or resale, the Mortgagee shall not be answerable for loss occasioned thereby; and for any of such purposes the Mortgagee may make and execute all arrangements and assurances that the Mortgagee shall deem advisable or necessary;
- (f) the Mortgagee shall be entitled from time to time (in addition to and without prejudice to all its other rights and privileges) to appoint a receiver or a receiver and manager (which receiver or receiver and manager is hereinafter referred to as a "Receiver") of the Property and of the rents, issues and profits thereof without the necessity of first exercising its right to enter into possession. Such Receiver may be appointed upon delivery by the Mortgagee to the Receiver of a notice in writing as to default under the provisions of this Mortgage. Upon the appointment of a Receiver from time to time the following provisions shall apply:
- (i) the Receiver shall be the irrevocable agent or attorney of the Mortgagor for the collection of all rents falling due in respect of the Property, or any part thereof, whether in respect of any tenancies created in priority to this Mortgage or subsequent thereto;
  - (ii) the Receiver may, in the discretion of the Mortgagee and by writing, be vested with all or any of the powers and discretion of the Mortgagee;
  - (iii) the Mortgagee may from time to time by such writing fix the remuneration of the Receiver who shall be entitled to deduct the same out of the revenue from the Property or the proceeds thereof;
  - (iv) the Receiver shall, so far as concerns responsibility for his acts or omissions (other than negligence or wilful misconduct), be deemed the agent or attorney of the Mortgagor and in no event the agent of the Mortgagee;

- (v) the appointment of the Receiver by the Mortgagor shall not incur or create any liability on the part of the Mortgagee to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such receivership shall not have the effect of constituting the Mortgagee as mortgagee in possession in respect of the Property, or any part thereof;
- (vi) the Receiver shall from time to time have the power to rent any portion of the Property which may become vacant for such term and subject to such provisions as shall appear to the Receiver most advantageous and as can reasonably be obtained therefor in the circumstances, and in so doing the Receiver shall act as the attorney or agent of the Mortgagor and shall have authority to execute any offer to lease, tenancy agreement or lease of any space in the Property in the name of and on behalf of the Mortgagor and the Mortgagor undertakes to ratify and confirm whatever actions the Receiver may take in such regard;
- (vii) the Receiver shall have full power to complete any unfinished construction on the Property (including, without limitation, the power to borrow funds in the name of and on the credit of the Mortgagor);
- (viii) the Receiver shall have full power to manage, operate, repair, alter or extend the Property, or any part thereof, in the name of the Mortgagor for the purpose of securing the payment of rental or revenue from the Property, or any part thereof;
- (ix) the Receiver shall account for the monies received in respect of the Property, or any part thereof, and out of such cash so received the Receiver shall, subject to the further direction of the Mortgagee in its discretion, in the following order pay:
  - (A) the Receiver's remuneration as aforesaid;
  - (B) all payments reasonably made or incurred by the Receiver in connection with the receivership;
  - (C) all payments of interest, principal and other money which may, from time to time, be or become charged upon the Property in priority to this Mortgage, and all bills, taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Property, or any part thereof; and
  - (D) all payments to the Mortgagee of all interest due or falling due hereunder and the balance to be applied upon the principal due and payable and secured hereby;and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Mortgagor or other Persons entitled thereto;
- (x) the Mortgagee may at any time and from time to time terminate the receivership by notice in writing to the Mortgagor and to the Receiver; and
- (xi) save as to claims for accounting under subparagraph (ix) above, the Mortgagor hereby releases and discharges the Mortgagee and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Mortgagor by reason of or as a result of anything done by the Mortgagee or any successor or assign claiming through or under the Mortgagee or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or neglect or wilful misconduct.

7.2 Limitation of Mortgagee's Liability

The Mortgagee shall not be charged with any monies receivable or collectible out of the Property or otherwise, except those actually received by or on behalf of the Mortgagee and all revenue of the Property received or collected by the Mortgagee from any source other than payment by the Mortgagor may, at the option of the Mortgagee, be retained in a separate account to be used in maintaining or insuring or improving the Property to the extent required for such purpose in the opinion of the Mortgagee acting reasonably; or in payment of taxes or other liens, charges or encumbrances against the Property; or applied in reduction of the amounts owing hereunder.

**ARTICLE 8**

**OTHER PROVISIONS CONCERNING REMEDIES**

8.1 Exercise of Remedies

In exercising any of the rights, recourses or remedies available hereunder, the Mortgagee may at its discretion, in respect of all or any part of the Property or any other security held by the Mortgagee, exercise such rights, recourses and remedies as are available hereunder or at law or equity, as it elects to exercise, without prejudicing the other rights, recourses and remedies available to the Mortgagee in respect of all or any part of the Property or any other mortgage, charge or other security held by the Mortgagor. The Mortgagee may exercise any of such rights, recourses and remedies in respect of all or any part of the Property (or any other security held by the Mortgagee), simultaneously or successively. It is further understood that the Mortgagee shall be entitled to exercise and enforce all of the rights and remedies available to it, free from any control of the Mortgagor provided, however, that the Mortgagee shall not be bound to realize any specific security nor exercise any right or remedy as aforesaid and shall not be liable for any loss which may be occasioned by any failure to do so.

8.2 Extension of Time and Waiver

Neither any extension of time given by the Mortgagee to the Mortgagor or any Person claiming through the Mortgagor, nor any amendment to this Mortgage or other dealing by the Mortgagee with a subsequent owner of the Property, or any part thereof, will in any way affect or prejudice the rights of the Mortgagee against the Mortgagor or any other Person or Persons liable for the payment or performance of the Obligations, except in respect of those specific Obligations for which an extension of time has been given or that have been amended and only to the extent of such extension or amendment. The Mortgagee may waive any Event of Default in its sole discretion. No waiver will extend to a subsequent Event of Default, whether or not the same as or similar to the Event of Default waived, and no act or omission by the Mortgagee will extend to, or affect, any subsequent Event of Default or the rights of the Mortgagee arising from such Event of Default. Any such waiver must be in writing and signed by the Mortgagee. No failure on the part of the Mortgagee or the Mortgagor to exercise, and no delay by the Mortgagee or the Mortgagor in exercising, any right pursuant to this Mortgage will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right.

8.3 Release of Property

The Mortgagee may release in its discretion and at any time any Person or any part or parts of the Property from all or any part of the Obligations or the security either with or without any consideration and without releasing any other part of the Property or any other Person from this Mortgage or from any of the covenants contained in this Mortgage, and without being accountable to the Mortgagor for the value of the Property released or for any money except that actually received by the Mortgagee. Every part or lot into which the Property is or may hereafter be divided will secure the entire Obligations. The Mortgagee may grant renewals, extensions, indulgences, releases and discharges, may take security from and give the same up, may abstain from taking security from, may accept compositions and proposals, and may otherwise deal with the Mortgagor and all other Persons and security as the Mortgagee may see fit without prejudicing the rights of the Mortgagee hereunder.

## ARTICLE 9

### OTHER PROVISIONS CONCERNING THE MORTGAGEE

#### 9.1 Protection of Persons Dealing with Mortgagee

No Person dealing with the Mortgagee or its agents need inquire whether this Mortgage, or the security interests created hereunder, have become enforceable or whether the powers which the Mortgagee is purporting to exercise have become exercisable.

#### 9.2 Delegation of Powers

The Mortgagee may delegate the exercise of its rights or the performance of its obligations hereunder to any other Person or Persons. In that event, the Mortgagee may furnish such delegate with any information it may have concerning the Mortgagor or the Property. The Mortgagee shall not be responsible for damages resulting from such delegation or from any fault committed by such delegate.

#### 9.3 No Liability of Mortgagee

Nothing herein contained shall by itself render the Mortgagee liable to any person for the fulfilment or non-fulfilment of any covenants, obligations, agreements and undertakings of the Mortgagor under the Property and the Mortgagor agrees to indemnify and save harmless the Mortgagee from and against all claims or demands whatsoever of any person arising from or out of the Mortgaged Property.

#### 9.4 Discretion to Exercise Powers

The Mortgagee, except as herein otherwise provided, shall, with respect to all rights, powers and authorities vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, it shall be in no way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

#### 9.5 Further Assurances

The Mortgagor shall at all times, at its own cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and singular such further acts and assurances in law, in each case consistent with the terms of this Mortgage, as the Mortgagee may reasonably require for the better mortgaging, charging, pledging and assigning unto the Mortgagee the property and assets hereby mortgaged, charged, pledged or assigned or intended so to be or which the Mortgagor may hereafter become bound to mortgage, charge, pledge or assign in favour of the Mortgagee and for the better accomplishing, effectuating and perfecting of this Mortgage, including, but not limiting the generality of the foregoing, such as may be required in order to register this Mortgage or perfect the registration of this Mortgage wherever the Mortgagee in its discretion considers that the same or notice of the same ought to be registered or filed.

#### 9.6 Charge Irrespective of Advances, Etc.

The mortgages, charges, pledges and assignments hereby created shall be effective whether or not any moneys or liabilities secured hereunder shall be advanced or incurred before or after or at the same time as this Mortgage is issued and shall remain effective until such time as the Obligations are paid and satisfied in full and this Mortgage has been discharged in writing by the Mortgagee irrespective of whether at any time prior thereto there may have been no indebtedness, liabilities or obligations (direct, indirect, absolute, contingent or otherwise) of the Mortgagor to the Mortgagee secured hereby outstanding.

## ARTICLE 10

### GENERAL

#### 10.1 Charge on After-Acquired Property

The Mortgagor agrees that at all times this Mortgage shall be a fully effective mortgage and charge on all of the Property, as it is constituted at the applicable time; without limiting the foregoing, it is agreed that this Mortgage shall extend to and be binding upon all portions of the Property that may be acquired by the Mortgagor at any time, or from time to time, after the date hereof, without any further action or documentation; provided that, if requested by the Mortgagee, the Mortgagor shall, upon demand, execute and deliver all additional deeds and/or indentures supplemental hereto which confirm that this Mortgage is so applicable to any such after-acquired lands and premises and/or give effect to the foregoing provisions of this Section 10.1. In addition, and without derogating from the foregoing, the Mortgagor agrees that if at any time an Affiliate of the Mortgagor acquires any portion of the Property, the Mortgagor shall cause such Affiliate to execute and deliver to the Mortgagee, prior to such acquisition being effected, a mortgage and charge identical to this Mortgage, *mutatis mutandis*, and such other documents, if any, as the Mortgagee may request in order to fully give effect to the intention of this provision.

#### 10.2 Discharge

If, and only if, there are no remaining Obligations outstanding, then the Mortgagee shall execute and deliver to the Mortgagor an agreement or acknowledgement (a "Discharge") fully discharging this Mortgage and the security interests created hereunder, together with any other instruments which may reasonably be required to discharge this Mortgage and the security interests created hereunder, such Discharge to be executed and delivered not later than thirty (30) days after (i) the conditions set out in this Section 10.2 have been satisfied and (ii) the Mortgagor has requested such Discharge.

#### 10.3 Improvements

The Mortgagor and the Mortgagee covenant and agree as follows:

- (a) the Improvements, which are to be used as a student residence on part of the Lands shall be registered as a condominium pursuant to the *Condominium Act* (Ontario);
- (b) the Mortgagee consents to the registration of the Improvements as a condominium and agrees to sign such consents or agreements as are required by the Mortgagor to give effect thereto, provided that the same are not materially adverse to the interests of the Mortgagee, all at the Mortgagor's expense;
- (c) no condominium unit in the Improvements shall be transferred by the Mortgagor without the prior written consent of the Mortgagee;
- (d) the Mortgagor intends to sever the Lands into two, or possibly four parts such that one other, or possibly three other, buildings may be built out on the Lands in addition to the Improvements, any or all of which may be registered as condominiums; and
- (e) no such severance, or further construction on the Lands, or registration as a condominium (other than as referred to in Subsections 10.3(a) and (b)) may be undertaken by the Mortgagor without the prior written consent of the Mortgagee, including as to the terms of any such severance, construction or condominium registration and as to the nature and terms of any transfers or partial transfers, assumption of any liability hereunder or of any partial discharges hereof.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 Waivers

No course of dealing on the part of the Mortgagor, its officers, employees, consultants or agents, nor any failure or delay by the Mortgagor with respect to exercising any right, power or privilege of the Mortgagor under this Mortgage or any other agreements between the parties hereto, shall operate as a waiver thereof.

#### 11.2 Notices

Any notice which is given or is required to be given pursuant to this Mortgage shall be in writing and shall be given by delivery or by facsimile or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address of electronic communication number as may from time to time be the subject of a notice hereunder:

(a) if to the Mortgagor, at:

3601 Highway 7 East  
Suite 903  
Markham, ON L3R 0M3  
Attention: Yueqing (Julia) Zhang  
Facsimile: 905.479.9890

with a copy to:

Fogler Rubinoff LLP  
Barristers & Solicitors  
77 King Street West  
Suite 3000  
TD Centre  
Toronto, ON M5K 1G8

Attention: Richard Rotchlin  
Facsimile: 416.941.8852

(b) if to the Mortgagee, at:

No. 178, Guanganmenwai Street  
Xicheng District, Beijing, 100055  
Attention: Xiaofan Zhang  
Facsimile: +86 10 63477491

with a copy to:

Davies Ward Phillips & Vineberg LLP  
Barristers & Solicitors  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Robert T. Bauer  
Facsimile: 416.863.0871

or to such other address as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice if delivered personally or by facsimile shall be deemed to be the date of delivery thereof (if such day is a Business Day and if not, the next following Business Day).

#### 11.3 Termination

Upon the execution and delivery of a Discharge by the Mortgagee, this Mortgage and the security interests created hereunder shall terminate and all covenants and agreements of the Mortgagor hereunder shall be at an end. It is confirmed and agreed that unless and until such

Discharge has been so executed and delivered that this Mortgage shall remain in full force and effect.

11.4        Separate Security

This Mortgage and the security interests created hereunder are in addition to and not in substitution of or in replacement for any other pledge, security, guarantee or other right held by or benefiting the Mortgagor.

11.5        Payment to Third Parties

If the Mortgagor is at any time or from time to time required or entitled to make a payment in connection with this Mortgage, such payment and all reasonable costs of the Mortgagor (including legal fees and other expenses) shall be immediately payable by the Mortgagor to the Mortgagor.

11.6        Governing Law

This Mortgage shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Mortgagor irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to all matters relating to the interpretation of, or enforcement of rights under, this Mortgage.

11.7        Successors and Assigns

This Mortgage shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto, provided that in no event shall the Mortgagor assign its obligations under this Mortgage without the prior written consent of the Mortgagor, which consent may be withheld in the sole and absolute discretion of the Mortgagor.

11.8        Further Assurances

The Mortgagor hereby covenants and agrees that it shall at all times, at its own cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and singular such further acts, assignments and assurances in law, in each case consistent with the terms of this Mortgage, as the Mortgagor may reasonably require for the better accomplishing, effectuating and perfecting of this Mortgage and the security interests created hereunder.

11.9        Counterparts

This Mortgage may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this Mortgage by signing any such counterpart. Each party hereto agrees that a copy of any signature page of this Mortgage with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this Mortgage on behalf of such party shall constitute all required evidence of the execution and delivery of this Mortgage by such party, it being agreed by the parties that execution of this Mortgage by facsimile or email is binding.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Mortgage.

JD DEVELOPMENT PHILLIP STREET  
LIMITED

by Regina Flagg  
Name:  
Title:

Name:  
Title:  
I/we have authority to bind the corporation.

CHINA MACHINERY ENGINEERING  
CORPORATION

by John H. Wang  
Name:  
Title:

Name:  
Title:  
I/we have authority to bind the corporation.

APPENDIX 1  
LEGAL DESCRIPTION OF LANDS

Part Lot 6, Subdivision Lot 13, German Company Tract, being Parts 1 and 2 on Plan 58R-17722,  
City of Waterloo, being P.I.N. 22365-0208 LT

2f

Ref: 30815359

## APPENDIX 2

### ADVANCES

#### 1.1 Second Advance Requirements

With respect to Section 4.2 of the Mortgage, the Mortgagee shall be entitled to obtain the Second Advance under the Loan upon, and only in compliance with, the following terms and conditions:

- (a) the Second Advance shall occur on or before May 31, 2014, as such date may be extended by the agreement of the Mortgagor and the Mortgagee (the "Second Advance Date");
- (b) the Mortgagor shall have delivered a request for advance in the form attached as Appendix 2-A (a "Request for Advance") at least 5 Business Days prior to the Second Advance Date, signed on behalf of the Mortgagor, which shall confirm the amount of the Requested Advance and shall include the certification by a senior officer of the Mortgagor with direct knowledge of the Property to the effect that:
  - (i) the Property has all the necessary development approvals and is in compliance with all legal and zoning by-law regulations of the area;
  - (ii) the Improvements lie within the property lines of the Lands and comply with applicable set back requirements as confirmed by certificate from a licensed surveyor;
  - (iii) the soil of the Lands is suitable for the anticipated Improvements; and
  - (iv) all property taxes and any interim installments have been paid.
- (c) the Mortgagee shall have received the Security and all action required to fully perfect and maintain the Security as a mortgage, pledge, charge, assignment and security interest of and upon those assets of the Mortgagor to which it applies shall have been successfully completed;
- (d) the Mortgagee shall have received a satisfactory Peer Review Report from a duly qualified consultant confirming the reasonableness of the various reports received from the Mortgagor prior to the date thereof and confirming the viability of the project including as to the historical demand for student housing in the local marketplace and the estimated time for the Project to stabilize based on pro forma rents, market supply, demand conditions and trends;
- (e) the Mortgagee shall have received a satisfactory Phase 1 Environmental Assessment addressed to it from a duly qualified environmental consultant;
- (f) the Mortgagee shall have received certificates as to the policies of insurance required to be maintained pursuant to Section 5.8, which certificates of insurance shall evidence that the proceeds thereof are payable to the Mortgagee as its interests may appear in accordance with Section 5.8 and such proceeds, except in respect of the general liability insurance, shall have been assigned to the Mortgagee;
- (g) all realty taxes and any other assessments or charges due and payable in respect of the Property shall have been paid in full;
- (h) the Mortgagor shall have delivered to the Mortgagee an opinion of the Mortgagor's counsel, addressed to the Mortgagee and the Mortgagee's counsel, in form satisfactory to the Mortgagee and its counsel, to the effect that:
  - (i) the Mortgagor and the Guarantor are each corporations duly incorporated and organized, and validly subsisting under the laws of the Province of Ontario;

- (ii) the Mortgagor has the corporate power to execute and deliver this Agreement and to borrow money hereunder, to grant the Security to which it is a party, to execute and deliver such Security, and to perform its obligations hereunder and thereunder;
  - (iii) the Guarantor has the corporate power to execute and deliver the Guarantee and Postponement of Claim and to perform its obligations thereunder;
  - (iv) all corporate action by the Mortgagor necessary to the validity of this Agreement, the Security to which it is a party and each other document to be delivered hereunder in connection with the Second Advance has been duly taken, and this Agreement and the Security do not conflict with any provision of the constating documents of the Mortgagor;
  - (v) all corporate action of the Guarantor necessary to the validity of the Guarantee and Postponement of Claim has been duly taken and the Guaranté and Postponement of Claim does not conflict with any provisions of the constating documents of the Guarantor; and
  - (vi) this Agreement and the Security to be delivered hereunder have been duly executed by, and each is a valid and binding obligation of the Mortgagor and the Guarantor (in each case to the extent applicable), enforceable in accordance with its terms except as enforcement may be affected by bankruptcy, insolvency or other laws of general application affecting the enforcement of the rights of creditors generally and subject to the qualification that equitable remedies, including specific performance and injunction, may only be granted in the discretion of a court of competent jurisdiction.
- (i) the Mortgagee's counsel shall have delivered to the Mortgagee an opinion, in form satisfactory to the Mortgagee, to the effect that:
    - (i) the Mortgagor has good and valid title to the Lands subject only to the Security, the Permitted Encumbrances and such other encumbrances as the Mortgagee shall have agreed to;
    - (ii) the Security constitutes a first mortgage, pledge, charge, assignment, and security interest of and upon the assets of the Mortgagor to which it relates, subject only to Permitted Encumbrances and such other encumbrances as the Mortgagee shall have agreed to; and
    - (iii) this Security and any document to be delivered thereunder has been duly filed, recorded or registered in all offices in Ontario in which such filing, recording or registration is necessary to make valid and effective, preserve and protect the Security;
  - (j) the Mortgagor shall not then be in default under the Loan or hereunder or under the balance of the Security.

#### 2.1 Subsequent Advances

With respect to Section 4.3 of the Mortgage, the Mortgagor shall be entitled to obtain subsequent advances (herein called "Subsequent Advances") under the Loan upon, and only in compliance with, *inter alia*, the following terms and conditions:

- (a) Subsequent Advances shall occur not more frequently than once a month, upon a date (herein called a "Subsequent Advance Date") determined by the Mortgagor and identified in a Request for Advance delivered to the Mortgagee at least 5 Business Days prior to the Subsequent Advance Date in question, which Request for Advance shall be to the same effect as in Subsection 1.1(b) hereof, but as of the Subsequent Advance Date in question;

- (b) to the same effect as in Subsection 1.1(g), as of the Subsequent Advance Date in question;
- (c) all Permitted Encumbrances shall be in good standing in all material respects;
- (d) any report or other information reasonably requested by the Mortgagee for the month in which the Advance in question is requested shall have been submitted to the Mortgagee;
- (e) the Mortgagee shall have received an updated opinion of counsel to the Mortgagee, as referenced in Subsection 1.1(i), addressed to the Mortgagee, covering the period from the most recent previous Advance to the Subsequent Advance Date in question, confirming a satisfactory subsearch of title and that there have been no intervening registrations since the last Advance; and
- (f) the Mortgagor shall not then be in default under the Loan or hereunder or under the balance of the Security.



Toks: 2081535.9

APPENDIX 2-A  
FORM OF REQUEST FOR ADVANCE

TO: CHINA MACHINERY ENGINEERING CORPORATION  
FROM: JD DEVELOPMENT PHILLIP STREET LIMITED (the "Mortgagor")  
DATE: ■  
RE: Advance pursuant to Mortgage and Charge made the ■ day of ■, 2014 (the "Mortgage")

---

In accordance with Appendix 2 to the Mortgage, we hereby request the Second Advance in the amount of [■ United States Dollars (US\$■)].

In support thereof, the undersigned, being a senior officer of the Mortgagor with direct knowledge of the Property, hereby certifies that:

- (a) the aggregate amount of all previous Advances is \$■;
- (b) the Property has all necessary development approvals and is in compliance with all legal and zoning by-laws and regulations of the area;
- (c) the Improvement is lie within the property lines of the Lands and comply with applicable set-back requirements as confirmed by a certificate from a licenced surveyor;
- (d) the soil of the Lands is suitable for the anticipated Improvements; and
- (e) all property taxes and any interim installments thereof have been paid.

JD DEVELOPMENT PHILLIP  
STREET LIMITED

by \_\_\_\_\_  
Name:  
Title:

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**This is Exhibit "J" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**



A handwritten signature in blue ink, appearing to read "K. Maher".

---

A COMMISSIONER FOR TAKING AFFIDAVIT

**AMENDMENT TO MORTGAGE AND CHARGE**

**THIS AMENDING AGREEMENT** made as of the 27<sup>th</sup> day of May, 2015

BETWEEN:

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**, a corporation existing under the laws of  
the Province of Ontario,

(hereinafter referred to as the "Mortgagor")

- and -

**CHINA MACHINERY ENGINEERING  
CORPORATION**, a corporation existing under the  
laws of the People's Republic of China,

(hereinafter referred to as the "Mortgagee")

**WITNESSES THAT:**

**WHEREAS** the Mortgagor and the Mortgagee entered into a Mortgage and Charge made as of the 9<sup>th</sup> day of June, 2014 in respect of the premises municipally known as 256 Phillip Street, Waterloo, Ontario, which was registered on title to such property as Instrument No. WR820800 on June 10, 2014 (the "Mortgage");

**AND WHEREAS** the Mortgagor and the Mortgagee wish to amend the terms of the Mortgage;

**AND WHEREAS** capitalized terms herein have the respective meanings given thereto in Section 1.1 of the Mortgage, unless the context otherwise requires;

**NOW THEREFORE** in consideration of two dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
AMENDMENTS**

**1.1        Definitions**

With respect to the following definitions in Section 1.1:

- (a) the definition of "Applicable Rate" is hereby deleted and replaced with the following:

"Applicable Rate" means 2.9930% per annum, calculated yearly not in advance";

- (b) the definition of "Commitment Letter" is hereby deleted and replaced with the following:

"Commitment Letter" means the commitment letter dated June 9, 2014, between the Mortgagor and the Mortgagee in respect of the Loan, as amended by the Commitment Letter Amending Agreement dated May 27, 2015, and as may be further amended from time to time;".

**1.2      Request for Advance**

The form of Request For Advance attached as Appendix 2-A is hereby amended by deleting the words in the fourth line commencing with "RE" and replacing them with the words:

"RE: Advance pursuant to Mortgage and Charge made the 9<sup>th</sup> day of June, 2014, as amended from time to time (the "Mortgage")".

**ARTICLE 2**  
**GENERAL**

**2.1      Counterparts**

This Amending Agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this Amending Agreement by signing any such counterpart. Each party hereto agrees that a copy of any signature page of this Amending Agreement with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this Amending Agreement on behalf of such party shall constitute all required evidence of the execution and delivery of this Amending Agreement by such party, it being agreed by the parties that execution of this Amending Agreement by facsimile or email is binding.

**2.2      Full Force and Effect**

The Mortgage, as amended by this Amending Agreement remains in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement.



JD DEVELOPMENT PHILLIP STREET  
LIMITED

By   
Name: Yueqing Zhang  
Title: Chief Executive Officer  
I/we have authority to bind the corporation.

CHINA MACHINERY ENGINEERING  
CORPORATION

By \_\_\_\_\_  
Name:  
Title:  
I/we have authority to bind the corporation.

**JD DEVELOPMENT PHILLIP STREET  
LIMITED**

By \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**CHINA MACHINERY ENGINEERING  
CORPORATION**

By \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**Properties**

**PIN** 22365 - 0208 LT  
**Description** PT, LOT 6 SUBDIVISION LOT 13 GERMAN COMPANY TRACT, BEING PTS. 1 & 2 ON 58R-17722. S/T EASEMENT OVER PT. 2 ON 58R-17722 AS IN 671916. S/T EASEMENT OVER PTS. 1 & 2 ON 58R-17722 AS IN 1563951; CITY OF WATERLOO  
**Address** 256 PHILLIPS STREET  
WATERLOO

**Consideration**

**Consideration** \$0.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

**Name** CHINA MACHINERY ENGINEERING CORPORATION  
**Address for Service** No. 178, Guanganmenwai Street  
Xicheng District, Beijing, 100055  
Attention: Xiaofan Zhang

I, Xiaofan Zhang, Authorized Signatory, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, WR20800 to which this notice relates is deleted.

Schedule: See Schedules

This document relates to registration no.(s) WR20800

**Signed By**

Frank Saverio Alfred Arnone	155 Wellington Street West Toronto M5V 3J7	acting for Applicant(s)	Signed 2015 06 05
-----------------------------	--	----------------------------	-------------------

Tel 416-863-0900

Fax 416-863-0871

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

DAVIES WARD PHILLIPS & VINEBERG LLP	155 Wellington Street West Toronto M5V 3J7	2015 06 05
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Tel 416-863-0900

Fax 416-863-0871

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Applicant Client File Number : 244673

**This is Exhibit "K" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**



---

A COMMISSIONER FOR TAKING AFFIDAVIT

AMENDMENT TO MORTGAGE AND CHARGE

THIS AMENDING AGREEMENT made as of the 6<sup>th</sup> day of June, 2016  
BETWEEN:

JD DEVELOPMENT PHILLIP STREET  
LIMITED, a corporation existing under the laws of  
the Province of Ontario,

(hereinafter referred to as the "Mortgagor")

- and -

CHINA MACHINERY ENGINEERING  
CORPORATION, a corporation existing under the  
laws of the People's Republic of China,

(hereinafter referred to as the "Mortgagee")

WITNESSES THAT:

WHEREAS the Mortgagor and the Mortgagee entered into a Mortgage and Charge made as of the 9<sup>th</sup> day of June, 2014 in respect of the premises municipally known as 256 Phillip Street, Waterloo, Ontario, which was registered on title to such property as Instrument No. WRS20800 on June 10, 2014 (the "Original Mortgage");

AND WHEREAS the Original Mortgage was amended by agreement made as of the 27th day of May, 2015, which was registered on title to such property as Instrument No. WR885069 on June 5, 2015 (the Original Mortgage as so amended herein referred to as the "Mortgage");

AND WHEREAS the Mortgagor and the Mortgagee wish to further amend the terms of the Mortgage;

AND WHEREAS capitalized terms herein have the respective meanings given thereto in Section 1.1 of the Mortgage, unless the context otherwise requires;

NOW THEREFORE in consideration of two dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
AMENDMENTS

1.1 Definitions

The definition of "Business Day" in Section 1.1 of the Mortgage is hereby deleted and replaced with the following definition:

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in either of the Province of Ontario or the People's Republic of China;

The following definitions are hereby added to Section 1.1 (to be inserted alphabetically):

"Blair House Site" means that portion of the Lands on which the Improvements have been constructed and which is designated as Parts 1, 5, 6, 7 and 15 on Plan 58R-18937;

"Fair Market Value" means the highest cost price, as determined by the Independent Appraiser, that a willing and informed purchaser would pay a willing and informed



vendor, each acting at arm's length, where neither party is under any compulsion to enter into the transaction;

"Independent Appraiser" means, with respect to all or any portion of the Lands, an independent, duly-qualified member of the Appraisal Institute of Ontario, selected by the mortgagor, acting reasonably, engaged in the business of appraising property of the type of property in question and competent to determine the value of such property;

"Parcel B" means, collectively with Parcel D, that portion of the Lands designated as Parts 3, 12, 13, 14, 19, 22, 23, 24 and 25 on Plan 58R-18937;

"Parcel C" means that portion of the Lands designated as Parts 2, 4, 6, 9, 10, 11, 16, 17, 18, 20 and 21 on Plan 58R-18937;

"Parcel D" means, collectively with Parcel B, that portion of the Lands designated as Parts 3, 12, 13, 14, 19, 22, 23, 24 and 25 on Plan 58R-18937;

"Shared Facilities Agreement" means the agreement to be entered into in respect of the four phase development of the Lands to provide reciprocal easements for servicing, access, parking, walkways, amenities and other arrangements which pertain to the integrated nature of such four phases;

**1.2 Partial Discharges**

The following shall be added as Section 10.4:

**\*10.4 Severances and Partial Discharges**

Further to Section 10.3 hereof, the Mortgagor and the Mortgagee acknowledge, covenant and agree as follows:

- (a) with the approval of the Mortgagee, the Mortgagor has applied for:
  - (i) the Blair House Site (including the improvements) to be registered as a condominium pursuant to the Condominium Act (Ontario); and
  - (ii) Parcels B and D collectively to be severed from Parcel C and the Blair House site collectively;
- (b) the Mortgagor shall be entitled to obtain and register on title a partial discharge of this Mortgage from Parcel C at any time prior to or after the Maturity Date (but not from Parcel B, Parcel D or the Blair House Site) provided that:
  - (i) the Mortgagor shall have requested such partial discharge from the Mortgagee in writing at least 7 Business Days prior to the date on which the Mortgagor contemplates execution and delivery of the same;
  - (ii) the condominium plan for the Blair House Site shall have been approved and registered on title to the Blair House Site;
  - (iii) the severance of Parcels D and B collectively shall have been consented to by the local committee of adjustment, the Mortgagee shall have approved any conditions attached thereto which pertain in any manner to the Blair House Site or the balance of the Lands that will remain subject to this Mortgagee (which approval shall not be unreasonably withheld or delayed and the response for such requested approval shall be given within 7 Business Days after the date the Mortgagee receives the written request for the

*[Handwritten signatures]*

approval) and the severance of Parcels B and D collectively shall have become final;

- (iv) the Shared Facilities Agreement shall have been approved by the Mortgagor (which approval shall not be unreasonably withheld or delayed and the response for such requested approval shall be given within 7 Business Days after the date the Mortgagor receives the written request for the approval) and shall have been executed, delivered and registered on title to the Lands and the Mortgagor shall have received copies of, and pre-approved the terms of any other easements, cost-sharing agreements, reciprocal rights agreements, restrictions, site plan agreements, or other instruments or agreements which are proposed to be put in place in connection with any access to, use of, or improvements to be constructed or operated on, Parcel C that might in any manner affect, impact, impair or otherwise relate in whole or in part to the Blair House Site, or the balance of the Lands which are then still subject to this Mortgage or any other security for the Loan, in each case to the extent that the Mortgage and/or such other security is to be postponed to them (which approval shall not be unreasonably withheld or delayed and the response for such requested approval shall be given within 7 Business Days after the date the Mortgagor receives the written request for the approval);
- (v) the rights of the Mortgagor, in its capacity as owner of the Blair House Site and Parcels B and D collectively in and under the Shared Facilities Agreement and any other agreements, restrictions on instruments referred to in Section 10.4(iv) shall have been assigned to the Mortgagor as additional security for the Loan pursuant to an assignment agreement in form acceptable to the Mortgagor acting reasonably;
- (vi) the Mortgagor has provided the Mortgagor with an appraisal or appraisals from an Independent Appraiser, in form satisfactory to the Mortgagor, evidencing that the Fair Market Value of Parcel C is no less than \$10,000,000 CDN and that the aggregate Fair Market Value of the Blair House Site, including the Improvements, together with the Fair Market Value of Parcel B, C and D, collectively, is no less than \$94,000,000 CDN, it being acknowledged that the Cushman & Wakefield appraisals dated November 3, 2015 for Parcel C, November 5, 2015 for Parcel A (the Blair House Site), December 16, 2015 for Parcel B and December 16, 2015 for Parcel D are satisfactory for the foregoing purposes;
- (vii) the Mortgagor shall, prior to, or concurrently with, execution and delivery of the requested partial discharge of Parcel C, have received payment by certified cheque or wire transfer of the sum of \$7,400,000 US, to be effected by delivery to Davies Ward Phillips & Vineberg LLP, in trust for the Mortgagor, which shall be applied to the reduction of the Loan and accrued interest thereon in accordance with Section 2.3 hereof; and
- (viii) the form of partial discharge and accompanying documentation shall be prepared by the solicitors for the Mortgagor at the cost of the Mortgagor, and the Mortgagor shall be responsible for all other costs of other

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documentation, such as appraisal reports, severance costs, surveys, other instruments and agreements pertaining to the severances and partial discharges in question, including the reasonable costs of the Mortgagor pertaining to obtaining and registering such partial discharge and otherwise complying with this Section 10.4. Any such costs incurred by the Mortgagor shall be paid to the Mortgagor concurrently with the partial discharge payment to be made pursuant to Section 10.4(b)(vii);

- (c) the Mortgagor shall be entitled to have this Mortgage postponed to the Shared Facilities Agreement and any easements or similar instruments that are to be registered against the Blair House Site or the balance of the Lands which remain subject to this Mortgage, pursuant to a postponement agreement in the prescribed form, provided that such agreement, easements and similar instruments have been approved by the Mortgagor in accordance with Section 10.4(b)(iv).

## ARTICLE 2 GENERAL

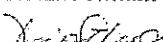
### 2.1 Counterparts

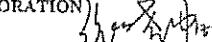
This Amending Agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement. Each of the parties hereto may execute this Amending Agreement by signing any such counterpart. Each party hereto agrees that a copy of any signature page of this Amending Agreement with a facsimile or email (with a pdf attachment) transmission of the signature of the person or persons signing this Amending Agreement on behalf of such party shall constitute all required evidence of the execution and delivery of this Amending Agreement by such party, it being agreed by the parties that execution of this Amending Agreement by facsimile or email is binding.

### 2.2 Full Force and Effect

The Mortgage, as amended by this Amending Agreement remains in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement.

JD DEVELOPMENT PHILLIP STREET  
LIMITED  
By   
Name: Yueqing Zhang  
Title: Chief Executive Officer  
I/we have authority to bind the corporation.

CHINA MACHINERY ENGINEERING  
CORPORATION  
By   
Name: Xibolan Zhang  
Title: Authorized Signatory  
I/we have authority to bind the corporation.



**Properties**

**PIN** 22365 - 0208 LT  
**Description** PT. LOT 6 SUBDIVISION LOT 13 GERMAN COMPANY TRACT, BEING PTS. 1 & 2 ON 58R-17722. S/T EASEMENT OVER PT. 2 ON 58R-17722 AS IN 671916. S/T EASEMENT OVER PTS. 1 & 2 ON 58R-17722 AS IN 1563951; CITY OF WATERLOO  
**Address** 256 PHILLIP STREET  
WATERLOO

**Consideration**

**Consideration** \$0.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

**Name** JD DEVELOPMENT PHILLIP STREET LIMITED  
**Address for Service** 3601 Highway 7 East  
Suite 610  
Markham, ON L3R 0M3

I, Yueqing Zhang, Chief Executive Officer, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

<b>Party To(s)</b>	<b>Capacity</b>	<b>Share</b>
<b>Name</b> CHINA MACHINERY ENGINEERING CORPORATION <b>Address for Service</b> No. 178, Guang'anmenwai Street Xicheng District, Beijing, 100055 Attention: Xiaofan Zhang		

I, Xiaofan Zhang, Authorized Signatory, have the authority to bind the corporation  
This document is not authorized under Power of Attorney by this party.

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, WR820800 registered on 2014/06/10 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration no(s) WR820800 and WR885069

**Signed By**

Frank Saverio Alfred Arnone 155 Wellington Street West Signed 2016 06 13  
Toronto M5V 3J7 acting for Applicant(s)

Tel 416-863-0900

Fax 416-863-0871

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West 2016 06 13  
Toronto M5V 3J7

Tel 416-863-0900

Fax 416-863-0871

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$62.85

LRO # 58 Notice

*The applicant(s) hereby applies to the Land Registrar.*

Registered as WR958443 on 2016 06 13 at 09:23

yyyy mm dd Page 2 of 6

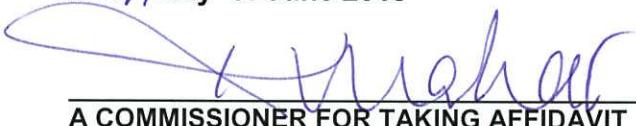
**Fees/Taxes/Payment**

Total Paid \$62.85

**File Number**

Party To Client File Number : 244673

**This is Exhibit "L" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 17<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVIT

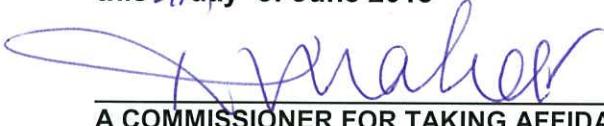
*Non-disputed Amount Calculation*

Date	06-11-2016	Interest To 09/09/2016	As of 09/09/2016	Repayment Sep 9, 16 (address principle and interest---Dec 20, 2016 Letter to CMEC)	Sep 9, 2016 Balance	Interest from Sep 9,16 to May 8, 2018 (2.993%)	Final Balance as May 8, 2018
Total Amount	61,380,000						
Not an advance*	(5,861,900)						
CMEC Principle	55,518,100		55,518,100	(4,151,531)	51,366,569		51,366,568
Total Interest	3,255,000	452,280	3,707,280	(3,248,469)	458,811	2,552,508	2,552,508
\$5,861,900 Interest <sub>2</sub>	(415,595)	(43,217)	(458,812)		(458,812)		
CMEC Interest	2,839,405	409,063	3,248,468	(3,248,469)	(1)	2,552,508	2,552,508
Total CMEC Amount	58,357,505	409,063	58,766,568	(7,400,000)	51,366,568		53,919,076

\* \$5,861,900 is from JD's Deposit Fund, not advance by CMEC

\$7,400,000 is separated by \$3,248,469 interest with \$4,151,531 principle which is addressed the letter our lawyer sent to CMEC on Dec 20, 2016

**This is Exhibit "M" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14 day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVIT

**MBBC Proforma Invoices Summary**

Date	Proforma Invoice No.	Description	Amount
15-May-14	CED-MBBC-PSRP-2014-003	Draw No. 1	30,861,900.00
15-Jun-14	CED-MBBC-PSRP-2014-004	Draw No. 2	5,018,107.00
15-Jul-14	CED-MBBC-PSRP-2014-005	Draw No. 3	3,499,993.00
15-Aug-14	CED-MBBC-PSRP-2014-006	Draw No. 4	1,000,000.00
15-Sep-14	CED-MBBC-PSRP-2014-007	Draw No. 5	1,500,000.00
20-Oct-14	CED-MBBC-PSRP-2014-008	Draw No. 6	2,000,000.00
21-Nov-14	CED-MBBC-PSRP-2014-009	Draw No. 7	3,000,000.00
19-Dec-14	CED-MBBC-PSRP-2014-010	Draw No. 8	2,500,000.00
26-Jan-15	CED-MBBC-PSRP-2015-011	Draw No. 9	2,000,000.00
26-Feb-14	CED-MBBC-PSRP-2015-012	Draw No. 10	3,000,000.00
26-Mar-15	CED-MBBC-PSRP-2015-013	Draw No. 11	3,000,000.00
27-Apr-15	CED-MBBC-PSRP-2015-014	Draw No. 12	1,600,000.00
27-May-15	CED-MBBC-PSRP-2015-015	Draw No. 13	400,000.00
25-Jun-15	CED-MBBC-PSRP-2015-016	Draw No. 14	400,000.00
27-Jul-15	CED-MBBC-PSRP-2015-017	Draw No. 15	400,000.00
31-Aug-15	CED-MBBC-PSRP-2015-017	Draw No. 16	400,000.00
30-Sep-15	CED-MBBC-PSRP-2015-018	Draw No. 17	800,000.00
<b>Total</b>			<b>61,380,000.00</b>

**JD View: Financing**
**Fund is wired through MBBC Bank Account**

Date	Amount
28-Jan-14	5,861,900.00
10-Jun-14	25,000,000.00
24-Jul-14	5,018,100.00
27-Aug-14	3,500,000.00
26-Sep-14	1,000,000.00
14-Oct-14	1,500,000.00
6-Nov-14	2,000,000.00
5-Dec-14	3,000,000.00
6-Jan-15	2,500,000.00
10-Feb-15	2,000,000.00
12-Mar-15	3,000,000.00
14-Apr-15	3,000,000.00
29-May-15	1,600,000.00
19-Jun-15	400,000.00
10-Jul-15	400,000.00
11-Aug-15	400,000.00
16-Sep-15	400,000.00
19-Oct-15	800,000.00
<b>Total</b>	
<b>61,380,000.00</b>	

**Deposit Paid by JD:**

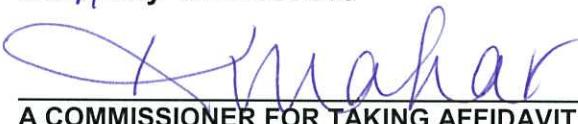
01/23/2014

Exchange Rate	USD	CAD
	3,831,900.00	
1.0837	2,030,000.00	2,200,000.00
	2,168,100.00	
	8,030,000.00	
	(2,168,100.00)	
CMEC Sinosure Insurance		
Balance	5,861,900.00	

Actual Fund from CMEC

55,518,100.00

**This is Exhibit "N" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 11<sup>th</sup> day of June 2018**

  
\_\_\_\_\_  
**A COMMISSIONER FOR TAKING AFFIDAVIT**

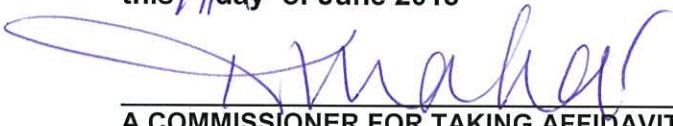
**CMEC Proforma Invoices Summary**

Date	Proforma Invoice No.	Description	Amount	Repayment Date	Paid	Repayment Amount	Balance of Repayment
				01/2014	8,030,000.00		8,030,000.00
30-May-14	PSRP-2014-001	Progress payment #1	33,030,000.00	06/2016		33,030,000.00	33,030,000.00
30-Jun-14	PSRP-2014-002	Progress payment #2	6,174,220.00	07/2016		6,174,220.00	6,174,220.00
30-Jul-14	PSRP-2014-003	Progress payment #3	4,192,500.00	08/2016		4,192,500.00	4,192,500.00
29-Aug-14	PSRP-2014-004	Progress payment #4	1,300,800.00	09/2016		1,300,800.00	1,300,800.00
				09/2016	7,400,000.00		7,400,000.00
30-Sep-14	PSRP-2014-005	Progress payment #5	2,040,000.00	10/2016		2,040,000.00	2,040,000.00
27-Oct-14	PSRP-2014-006	Progress payment #6	2,350,000.00	11/2016		2,350,000.00	2,350,000.00
28-Nov-14	PSRP-2014-007	Progress payment #7	3,300,000.00	12/2016		3,300,000.00	3,300,000.00
29-Dec-14	PSRP-2014-008	Progress payment #8	2,800,000.00	01/2017		2,800,000.00	2,800,000.00
29-Jan-15	PSRP-2015-009	Progress payment #9	2,900,000.00	02/2017		2,900,000.00	2,900,000.00
27-Feb-15	PSRP-2015-010	Progress payment #10	3,750,000.00	03/2017		3,750,000.00	3,750,000.00
30-Mar-15	PSRP-2015-011	Progress payment #11	4,000,000.00	04/2017		4,000,000.00	4,000,000.00
30-Apr-15	PSRP-2015-012	Progress payment #12	2,700,000.00	05/2017		2,700,000.00	2,700,000.00
29-May-15	PSRP-2015-013	Progress payment #13	900,000.00	06/2017		900,000.00	900,000.00
30-Jun-15	PSRP-2015-014	Progress payment #14	800,000.00	07/2017		800,000.00	800,000.00
30-Jul-15	PSRP-2015-015	Progress payment #15	600,000.00	08/2017		600,000.00	600,000.00
31-Aug-15	PSRP-2015-016	Progress payment #16	700,000.00	09/2017		700,000.00	700,000.00
30-Sep-15	PSRP-2015-017	Progress payment #17	1,127,480.00	10/2017		1,127,480.00	1,127,480.00
	<b>Total</b>		<b>72,665,000.00</b>	<b>Final Maturity Date</b>	<b>15,430,000.00</b>	<b>72,665,000.00</b>	<b>57,235,000.00</b>

48 month from first draw, June 2018

Original Contract	80,300,000.00
Workscope Reduce	(7,635,000.00)
	<b>72,665,000.00</b>

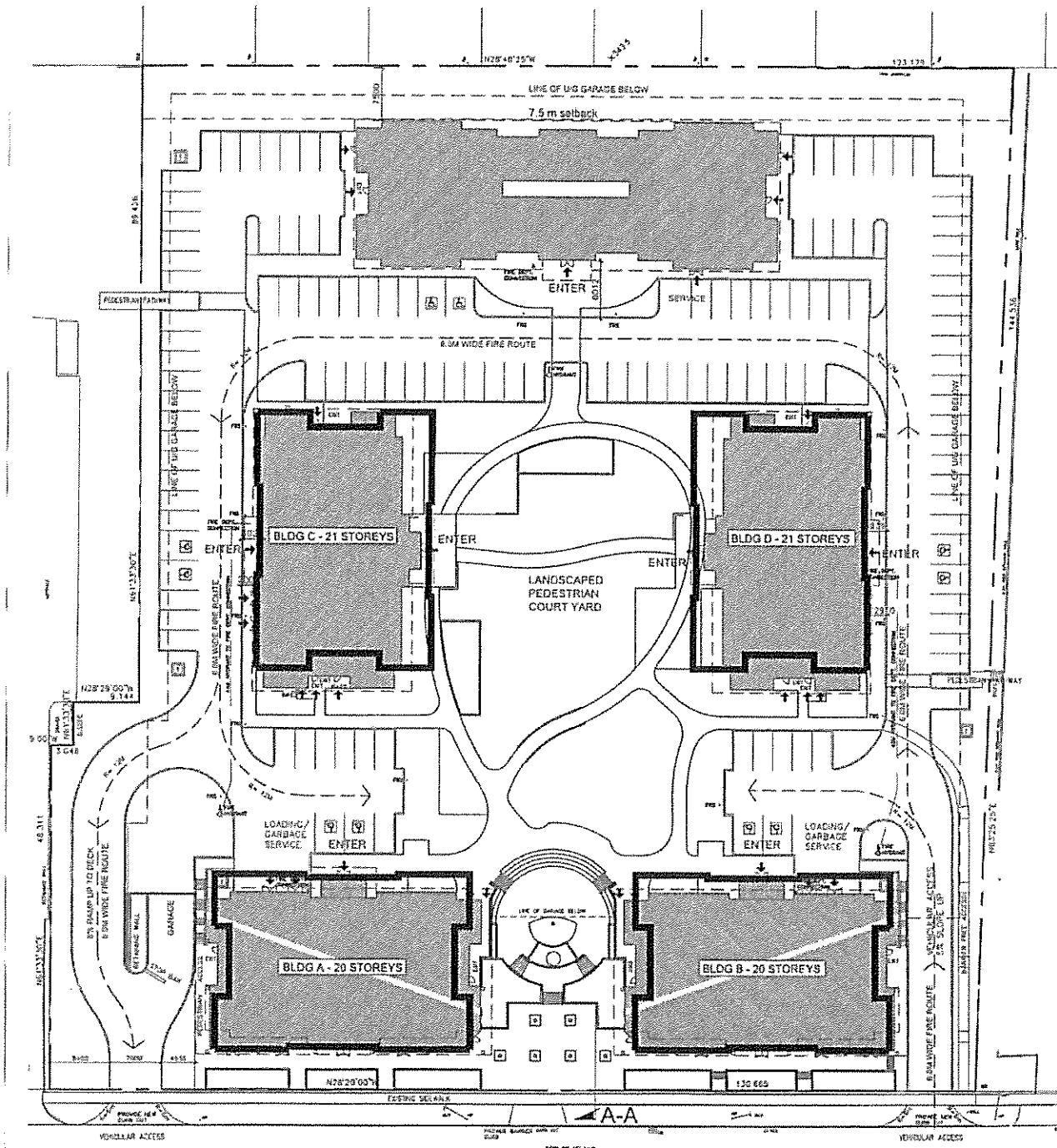
**This is Exhibit "O" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

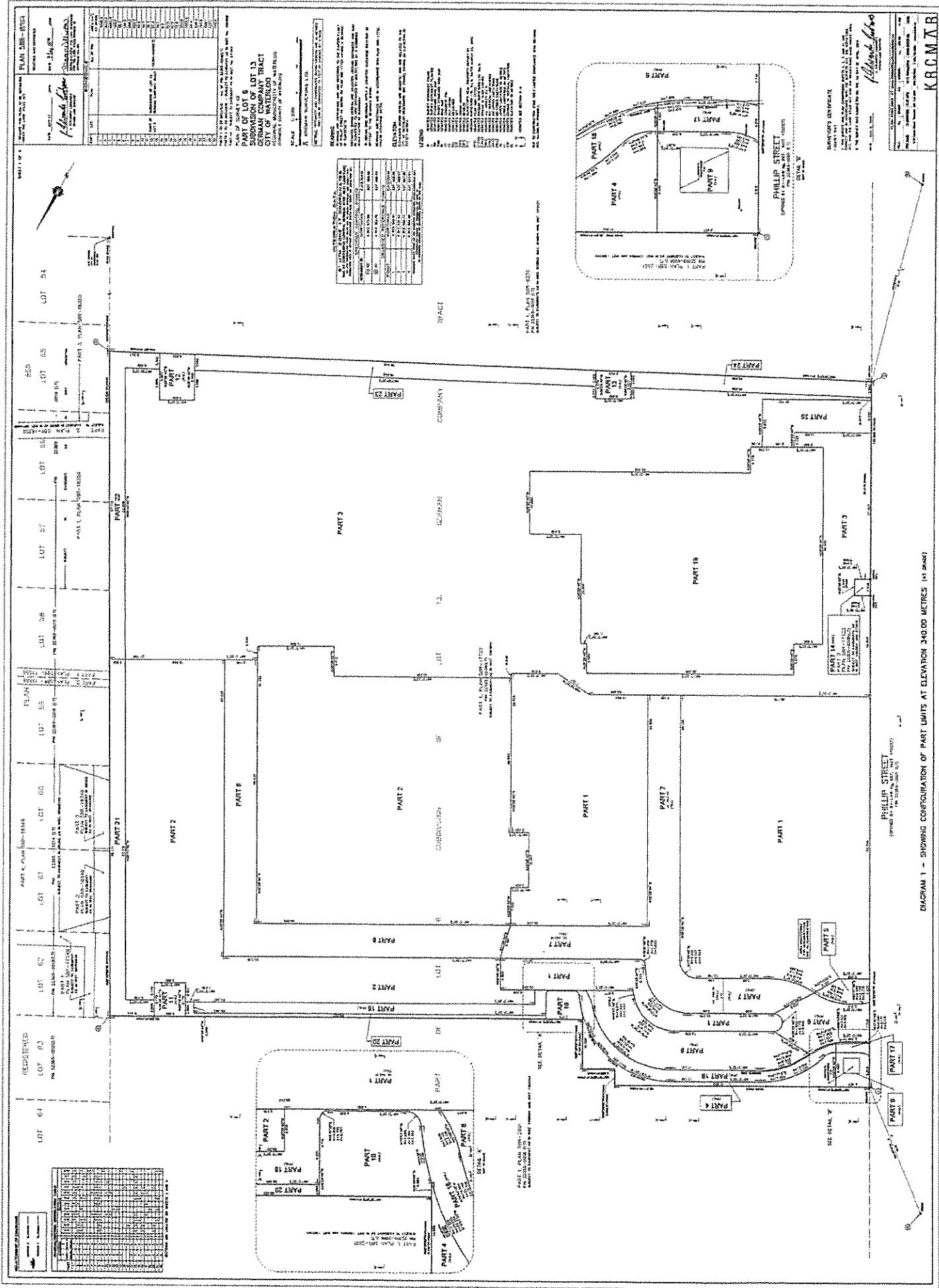
  
A COMMISSIONER FOR TAKING AFFIDAVIT

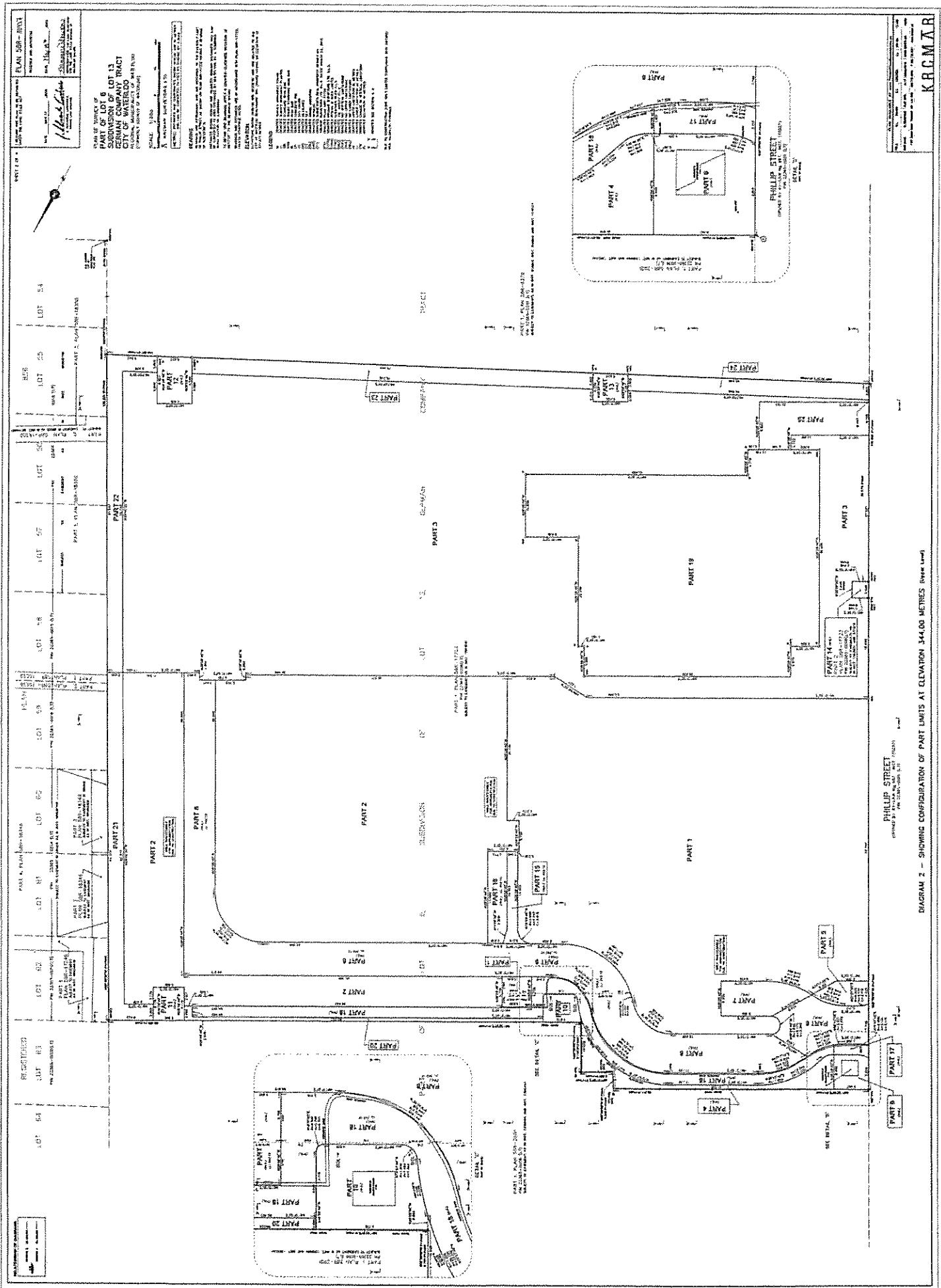
	<b>Contract Date</b>		<b>Signed Contract with</b>	<b>Service For</b>
1	January 27, 2011	JD Development	MacKinnon & Associates	Landscape architectural design.
2	January 31, 2011	JD Development Canada Corp.	MCL	Architect design and service.
3	April 8, 2011	JD Development Phillip St. LP	MTE	Sanitary engineering service
4	September 12, 2011	JD Development	RWDI	Wind Engineering Service
5	December 29, 2011	JD Development Phillip St. LP	CVD	Geotechnical Study
6	August 9, 2012	JD Development Phillip St. LP	Larden Muniak	Code Consulting Service
7	August 9, 2012	JD Development Phillip St. LP	Krcmar	Surveying Service
8	August 23, 2012	JD Development Group	IBI	Civil Engineering Service
9	October 10, 2012	JD Development Group	Stephenson	Structural Engineering
10	November 1, 2012	JD Development Group	Stephenson	Building Envelope Design & Review
11	November 8, 2012	JD Development Phillip St. LP	EMCAD	Mechanical & Electrical Engineering
12	November 19, 2012	JD Development Phillip St. LP	Hudson Kruse	Interior Design
13	November 23, 2012	JD Development Phillip St. LP	Golder Associates	Pre-Demolition Designated Substance Survey
14	December 18, 2012	JD Development Canada Corp.	MCL	Architectural Additional Service
15	May 27, 2013	JD Development Group	Altus Group	Cost Consultant
16	September 16, 2013	JD Development	EXP	Building Envelope Design & Review
17	January 17, 2014	JD Development Phillip St. LP	Melloul Blamey Construction Inc.	CCDC Contract
18	February 13, 2014	JD Development Phillip St. LP	Phoenix	Security Design
19	February 14, 2014	JD Development Phillip St. LP	Energex	Energy Management
20	February 19, 2014	JD Development Phillip St. LP	GSP	Planning Consultant
21	August 23, 2014	JD Development Phillip St. LP	Paradigm Transportation Solution	Traffic Design

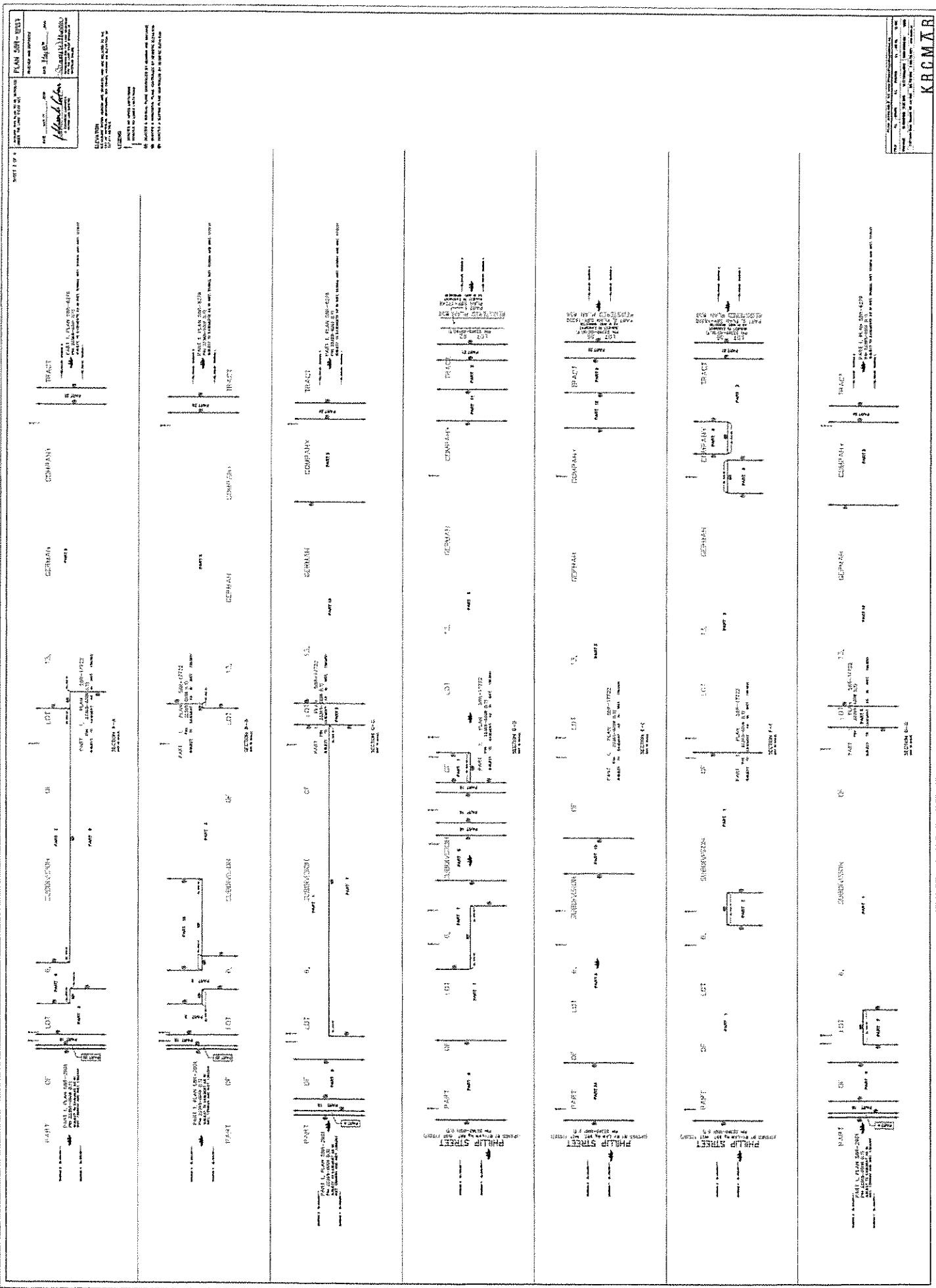
This is Exhibit "P" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVIT

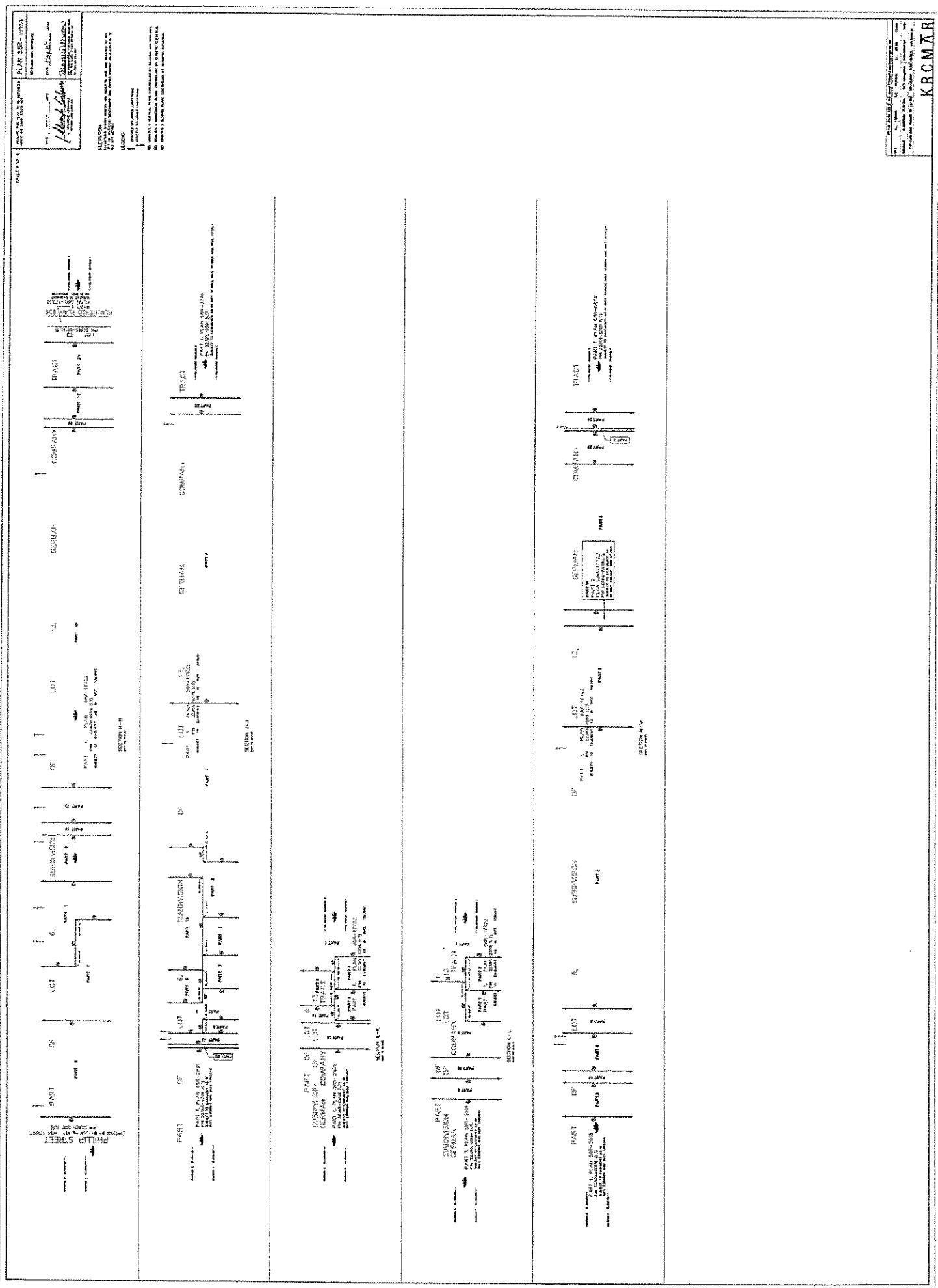




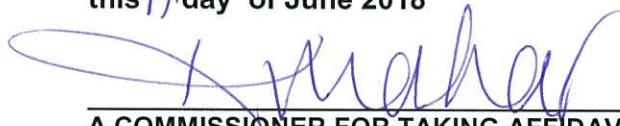




KRCM TR



This is Exhibit "Q" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVIT

**Stoica, Alina**

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**From:** Zhang Xiaofan <zhangxf@mail.cmec.com>  
**Sent:** Wednesday, January 16, 2013 5:44 AM  
**To:** Julia Zhang; Jennifer Xu; hai xu  
**Cc:** 李筱金; linan; 万昊澎; sunhao; shijt  
**Subject:** Itinerary  
**Attachments:** meeting schedule.doc

Dear all,

Please kindly find attached meeting schedule for your reference. The schedule may changed based on our working progress.

Best regards,

---

Zhang Xiaofan

### Meeting Schedule

Date	Time	Events	Remarks
17 <sup>th</sup> Thursday	9:00-12:00	Technical document discussion	
	12:00	Lunch	
	13:30-17:00	Commercial negotiation	
18 <sup>th</sup> Friday	9:30-11:00	Meeting with SINOSURE	
	12:00	Lunch	
	13:30-14:30	CMEC technical evaluation meeting	Time to be decided
19 <sup>th</sup> Saturday	14:30- 17:00	Commercial negotiation	
	8:30-17:00	Sightseeing Great Wall	John, Hao Zhang, Michael, Jeffrey, Wan Haopeng
	9:00-12:00	Finalize the technical document	
	12:00	Lunch	

Date	Time	Events	Remarks
	13:30-16:00	Commercial negotiation	
20 <sup>th</sup> Sunday	9:00-12:00	Commercial negotiation	
	12:00	Lunch	
	13:30-17:00	Commercial negotiation	
21 <sup>st</sup> Monday	9:30-12:00	Finalize all the contract document	
	12:00	Lunch	
22 <sup>nd</sup> Tuesday	9:30-12:00	CMEC evaluation meeting	Time to be decided
	12:00	Lunch	
	13:30-17:00	Contract Signing	

**Contact number:**

Zhang Xiaofan: 13501173199

Li Nan : 13488615350

Wan Hao peng : 18640090979

**This is Exhibit "R" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVIT

## Mahar, Kyla

---

**From:** Shi Jiantao <shijt@mail.cmecc.com>  
**Sent:** Monday, January 21, 2013 11:58 AM  
**To:** Jennifer Xu; zhangxf@mail.cmecc.com  
**Cc:** Julia Zhang  
**Subject:** 答复: BLDG C - Cash Flow Schedule  
**Attachments:** Price Sheet A (draft)v2.xlsx

发件人: Jennifer Xu [mailto:[Jennifer.Xu@jddevelopment.ca](mailto:Jennifer.Xu@jddevelopment.ca)]

发送时间: 2013 年 1 月 21 日 22:45

收件人: shijt@mail.cmecc.com; zhangxf@mail.cmecc.com

抄送: Julia Zhang

主题: BLDG C – Cash Flow Schedule

1	6,400,000	7,272,727	9,464,337	5,461,390
2				
3				
4				
5				
6				
7	15,152,726	19,370,495	24	18,789,381
8	5,464,987	6,986,169	24	6,776,584
9	3,015,667	3,855,080	24	3,739,427
10	3,408,391	4,357,118	24	4,226,405
11	3,262,023	4,170,009	24	4,044,909
12	2,773,153	3,545,061	24	3,438,709
13	2,314,629	2,948,603	23	2,860,145
14	2,229,367	2,830,063	22	2,745,161
15	2,539,321	3,212,229	21	3,115,862
16	2,175,537	2,742,360	20	2,660,089
17	1,577,615	1,981,629	19	1,922,180
18	3,630,880	4,544,555	18	4,408,218
19	1,062,926	1,325,669	17	1,285,899
20	9,000,000	11,184,630	16	10,849,091
21	0	0		0
22	0	0		0
23	0	0		0
24		73,053,669		
25		2,191,610		
26	64,007,221	80,326,396	80,326,396	
27				
28			125.50%	
29				
30				
31				

32  
33  
34  
35  
36

70,862,059  
76,323,449

**This is Exhibit "S" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVIT

**Stoica, Alina**

---

**From:** Zhang Xiaofan <zhangxf@mail.cmecc.com>  
**Sent:** Wednesday, January 22, 2014 7:07 AM  
**To:** Julia Zhang  
**Cc:** Jennifer Xu; Maggie Liu; lichaoyang; shijt; michuan; hai xu  
**Subject:** Deposit about Phillip project -预付款申请~ see this version  
**Attachments:** 140122refund deposit.pdf; 140122 designated account.pdf

Dear Julia,

Please kindly find attached letters related to the deposit payment for your reference. We are very glad to inform you that we already provide the following documents to meet the requirement for receiving deposit from your side:

1. Amendment No. 3
2. Contract Agreement, Conditions and all associated backup documents for the subcontract between CED and MBBC. - need both CED and MBBC's signature. (Contract conditions will send to you tomorrow after initial by CED staff)
3. Financing Commitment Letter and The document from Bank of China
4. Letter from CMEC for refund deposit in case that we fail to commence the work (Attached)
5. Payment details (Attached)

We are looking forward to successful corporation with you.

Best regards,

Zhang Xiaofan



No. 178, Guang anmenwai Street, Beijing 100055, China      <http://www.cmecc.com>  
Email:cmecc@mail.cmecc.com      Tel: (86-10) 63451188      Fax: (86-10) 63261865

22<sup>nd</sup> January 2014

**JD Development Phillip Street Limited**  
3601 Highway 7 E, Suite 610  
Markham, ON L3R 0M3

Dear Sir/Madam:

**Re: Deposit Refund Issue Related to Phillip Student Residence Project Phase I**

For your information, in case we could not make the Project commence according to the Amendment No.1 to the Contract of Phillip Student Residence Project (Contract No.: JD/CMEC/2013-001) in which the Article A-10 is defined. The balance of the Deposit should be refunded to JD Development Phillip Street Limited after deduction of the payment to the subcontractor (Melloul-Blamey Building Corp.), charges of China Export & Credit Insurance Corporation (SINOSURE) and other necessary expenses related to above mentioned project incurred by CMEC.

Best Regards

A handwritten signature in black ink, appearing to read "Zhang Xiaofan".

Zhang Xiaofan  
Assistance Managing Director of Complete Plant Division.



中國機械設備工程股份有限公司  
China Machinery Engineering Corporation

No. 178, Guang anmenwai Street, Beijing 100055, China      <http://www.cmecc.com>  
Email:cmecc@mail.cmecc.com      Tel: (86-10) 63451188      Fax: (86-10) 63261865

22<sup>nd</sup> January, 2014

**JD Development Phillip Street Limited**  
3601 Highway 7 E, Suite 610  
Markham, ON L3R 0M3

Dear Sir/Madam,

**Re: Confirm the Down Payment Detail and Account info to Phillip Student Residence Project Phase I**

We hereby confirm the below payment detail for the 10% Deposit of the contract price according to the Contract (Contract No.: JD/CMEC/2013-001) and the bank accounts info which are as follows:

Total amount of Deposit should be \$6,000,000 (say: Six Million US Dollars Only) plus C\$2,200,000 (say: Two Million Two Hundred Thousand Canadian Dollars Only),

1. An amount of

- \$3,831,900 (say: Three Million Eight Hundred Thirty One Thousand and Nine Hundred US Dollars Only) and
- C\$ 2,200,000 (say: Two Million Two Hundred Thousand Canadian Dollars Only)

shall be paid to the following bank account by directly bank transfer.

Bank Name: BANK OF COMMUNICATIONS, HONG KONG BRANCH

Bank Address: 20 PEDDER ST, HONG KONG

Account No. & Swift: 02753292236223 COMMHKHH

Beneficiary: CHINA EVERBEST DEVELOPMENT INTERNATIONAL LTD.

Address: RM 804, TOWER 1, SOUTH SEAS CNETRE, T.S.T EAST, KOWLOON, HONG KONG.

A handwritten signature in black ink, appearing to read "Wang Jun".

2. Another amount of **\$2,168,100** (say: Two Million One Hundred and Sixty Eight Thousand One Hundred US Dollar Only) shall be paid to another bank account as follows by directly bank transfer:

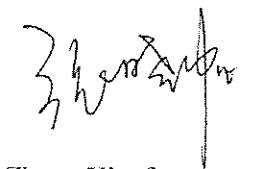
Bank Name: Bank of China (Hong Kong ) Limited

Account No. & Swift: 012-875-9-250387-4 BKCHHKHH

Beneficiary: CHINA MACHINERY ENGINEERING CORPORATION

Your prompt remittance will be appreciated.

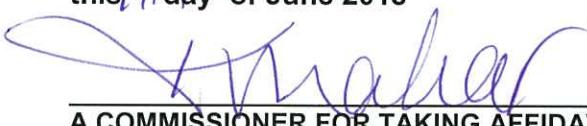
Faithfully Yours,

A handwritten signature in black ink, appearing to read "Zhang Xiaofan".

Zhang Xiaofan

Assistance Managing Director of Complete Plant Division

**This is Exhibit "T" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 17<sup>th</sup> day of June 2018**

  
A COMMISSIONER FOR TAKING AFFIDAVIT

Request ID: 021655080  
Demande n° :  
Transaction ID: 68089645  
Transaction n° :  
Category ID: UN/B  
Catégorie :

Province of Ontario  
Province de l'Ontario  
Ministry of Government Services  
Ministère des Services gouvernementaux

Date Report Produced: 2018/05/16  
Document produit le :  
Time Report Produced: 15:31:13  
Imprimé à :

## STATEMENT OF NO RECORD ÉTAT D'ABSENCE DE DOSSIER

Date Report Produced :

Rapport produit le :

MAY 16 MAI, 2018

Corporation Name :

CHINA MACHINERY ENGINEERING CORPORATION

Dénomination sociale :

After entering the information exactly as it is printed above, a record could not be found for the above corporation name or the above Ontario corporation number, as of:

MAY 16 MAI, 2018

Not all corporate files transferred to the Government Records Centre or Archives from the Ministry of Government Services prior to June 27, 1992 have been recorded in the Ontario Business Information System. Additional historical information may exist.

Nous n'avons trouvé aucun dossier se rapportant à la dénomination sociale ou au numéro matricule de la société (Ontario) indiqués ci-dessus, en date du :

Les dossiers de renseignements sur les sociétés qui ont été transférés au Centre d'entreposage des dossiers ou aux Archives avant le 27 juin 1992 n'apparaissent pas tous dans le Système d'information sur les entreprises de l'Ontario (SINEO). Il se peut qu'il y ait d'autres renseignements concernant cette société.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.  
La délivrance sous forme électronique du présent rapport est autorisée par le Ministère des Services gouvernementaux.



## Name Search Results

Search for : **Corporations And Business Entities**  
 Name Searched : **china\* machin\***  
 Jurisdictions Searched : **FED, ON, QC, BC, AB, MB, SK, NS, NB, NL, PE, NT, YT, NU**  
 Results Returned : **7**  
 Timestamp (E.S.T.) : **2017/11/09 11:44**

Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
CHINA MICRO MACHINERY (CANADA) INC.	Ont. Business Corp.	ON	000933544	1991/03/07	Canc. By C.B.	
CHINA JINXI MACHINERY PLANT (CANADA) LTD.	CBCA	CA	6063926	2003/02/10	Dissolved	
CHINA SOUEAST MACHINERY (CANADA) LIMITED	Corp	BC	1065289	2016/02/18	Active	
CHINA (GANSU) MACHINE BUILDING GROUP IMPORT / EXPORT (CANADA)	Pt_Prpshp	BC	FM0318166	2002/02/27	Active	
QUALITY MACHINERY CHINA	SI_Prpshp	ON	231121070	2013/11/18	Active	
CANADA CHINA MACHINERY AND ELECTRONICS INDUSTRIES ASSOCIATION	CCA_Pt2	CA	7547501	2010/05/31	Dissolved	
CHINA NATIONAL MACHINERIES & EQUIPMENT IM/EX & INDUSTRIAL SERVICES INTERNATIONAL CO.	Pt_Prpshp	BC	FM0222119	1997/06/19	Active	

This is Exhibit "U" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018



A COMMISSIONER FOR TAKING AFFIDAVIT

Request ID: 021655503  
Demande n° :  
Transaction ID: 68090731  
Transaction n° :  
Category ID: UN/B  
Catégorie :

Province of Ontario  
Province de l'Ontario  
Ministry of Government Services  
Ministère des Services gouvernementaux

Date Report Produced: 2018/05/16  
Document produit le :  
Time Report Produced: 16:09:14  
Imprimé à :

## STATEMENT OF NO RECORD ÉTAT D'ABSENCE DE DOSSIER

Date Report Produced :

Rapport produit le :

MAY 16 MAI, 2018

Corporation Name :

CHINA EVERBEST DEVELOPMENT INTERNATIONAL  
LIMITED

Dénomination sociale :

After entering the information exactly as it is printed above, a record could not be found for the above corporation name or the above Ontario corporation number, as of:

MAY 16 MAI, 2018

Not all corporate files transferred to the Government Records Centre or Archives from the Ministry of Government Services prior to June 27, 1992 have been recorded in the Ontario Business Information System. Additional historical information may exist.

Nous n'avons trouvé aucun dossier se rapportant à la dénomination sociale ou au numéro matricule de la société (Ontario) indiqués ci-dessus, en date du :

Les dossiers de renseignements sur les sociétés qui ont été transférés au Centre d'entreposage des dossiers ou aux Archives avant le 27 juin 1992 n'apparaissent pas tous dans le Système d'information sur les entreprises de l'Ontario (SINEO). Il se peut qu'il y ait d'autres renseignements concernant cette société.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.  
La délivrance sous forme électronique du présent rapport est autorisée par le Ministère des Services gouvernementaux.



## Name Search Results

Search for : Corporations And Business Entities  
 Name Searched : everbest\*  
 Jurisdictions Searched : FED, ON, QC, BC, AB, MB, SK, NS, NB, NL, PE, NT, YT, NU  
 Results Returned : 39  
 Timestamp (E.S.T.) : 2017/11/09 11:49

Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
EVERBEST INC.	Ont. Business Corp.	ON	001217870	1997/01/13	Vol. Diss. (Ont.)	
EVERBEST BAKERY	AsmdBusNm	ON	270769433	2017/07/13	Active	
EVERBEST CANADA	AsmdBusNm	ON	260921630	2016/09/13	Active	
EVERBEST BAKERY LTD.	Ont. Business Corp.	ON	000907603	1990/08/09	Canc. By C.T.	
EVERBEST PRODUCE CO.	AsmdBusNm	ON	230317919	2013/03/27	Active	
EVERBEST LIQUOR INC.	Bus_Corp	AB	2017580412	2013/07/02	Dissolved	
EVERBEST PRODUCE LTD.	Ont. Business Corp.	ON	002074794	2005/06/15	Active	NC
EVERBEST CONSULTANTS	Bus_Name	SK	0000176635	1991/10/01	Expired	
EVERBEST ALBERTA LTD.	Bus_Corp	AB	209843242	2002/04/16	Dissolved	
EVERBEST PRODUCE CORP.	Ont. Business Corp.	ON	002074794	2005/06/15	Active	
EVERBEST ELECTRIC LTD.	Ont. Business Corp.	ON	001376585	1999/09/24	Canc. By C.T.	
EVERBEST DEVELOPMENTS	Pt_Prpshp	BC	FM0153404	1993/12/08	Active	
EVERBEST HOLDINGS INC.	Bus_Corp	AB	2016321701	2011/09/28	Dissolved	
EVERBEST OF CANADA INC.	Ont. Business Corp.	ON	001185255	1996/06/18	Vol. Diss. (Ont.)	
EVERBEST SOLUTIONS INC.	Bus_Corp	AB	2016322097	2011/09/28	Dissolved	
EVERBEST MANAGEMENT INC.	Ont. Business Corp.	ON	000449368	1980/06/16	Canc. By C.T.	NC
EVERBEST MANAGEMENT INC.		ON	449368	1980/06/16	CorpNmChg	
EVERBEST PROPERTIES INC.	Bus_Corp	AB	2016322030	2011/09/28	Active	
EVERBEST ALLERGENICS INC.	Ont. Business Corp.	ON	000449368	1980/06/16	Canc. By C.T.	



Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
EVERBEST GARMENT MFG. INC.	Ont. Business Corp.	ON	001318176	1998/10/05	Canc. By C.T.	
EVERBEST INVESTMENTS INC.	Bus_Corp	AB	2010654230	2003/10/11	Struck	
EVERBEST TRADING COMPANY	Pt_Prpshp	BC	FM0155768	1994/02/15	Active	
EVERBEST BAKERY (FAIRVIEW) LTD.	Ont. Business Corp.	ON	000988757	1992/05/29	Active	
EVERBEST BAKERY (RICHMOND) LTD.	Ont. Business Corp.	ON	001122775	1995/03/17	Canc. By C.T.	
EVERBEST BAKERY (WOODSIDE) LTD.	Ont. Business Corp.	ON	000994228	1992/07/07	Vol. Diss. (Ont.)	
EVERBEST JANITORIAL SERVICES	Name_Chg	BC	CH0561490		Historic	
EVERBEST BAKERY WHOLESALE LTD.	Ont. Business Corp.	ON	001087973	1994/06/30	Vol. Diss. (Ont.)	
EVERBEST BUILDING MAINTENANCE	Pt_Prpshp	BC	FM0561490	2011/07/13	Active	
EVERBEST PRODUCTION (CANADA) LTD.	Ont. Business Corp.	ON	001015712	1993/01/25	Vol. Diss. (Ont.)	
EVERBEST MANAGEMENT & SERVICES CO.	TradeName	AB	TN4618591	1990/06/01	Active	
EVERBEST MANAGEMENT & SERVICES LTD.	Ont. Business Corp.	ON	000753159	1987/12/30	Canc. By C.B.	NC
EVERBEST MANAGEMENT & SERVICES LTD.		ON	753159	1987/12/30	CorpNmChg	
EVERBEST INTERNATIONAL INSURANCE INC.	Ont. Business Corp.	ON	001128012	1995/04/25	Active	
EVERBEST CONSTRUCTION COMPANY LIMITED	Ont. Business Corp.	ON	000113379	1961/05/17	Canc. By C.T.	
EVERBEST INVESTMENT CANADA COMPANY LTD	Ont. Business Corp.	ON	000574115	1983/12/28	Active	
EVERBEST HANDICAPPED SALES & SERVICES LIMITED	Ont. Business Corp.	ON	000451718	1980/07/22	Canc. By C.T.	
THE EVERBEST COMPANY	Ptnrshp	AB	CAL005264	1937/04/23	Active	
THE EVERBEST COMPANY	Ptnrshp	AB	CAL005355		Dissolved	
A & G EVERBEST INC.	Ont. Business Corp.	ON	001088899	1994/07/08	Vol. Diss. (Ont.)	



## Name Search Results

Search for : **Corporations And Business Entities**  
Name Searched : **china\* ever\***  
Jurisdictions Searched : **FED, ON, QC, BC, AB, MB, SK, NS, NB, NL, PE, NT, YT, NU**  
Results Returned : **1**  
Timestamp (E.S.T.) : **2017/11/09 11:48**

Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
CANADA-CHINA EVER GREEN ASSOCIATION	Ont. Corp. Non-Share	ON	001922277	2015/04/02	Active	

**This is Exhibit "V" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018**

  
**A COMMISSIONER FOR TAKING AFFIDAVIT**

[Builder Directory](#)[MyHome](#)[Builder Link](#)[HOME](#) [ABOUT](#) [HOMEOWNERS](#) [BUILDERS](#) [RESOURCES](#) [FAQ](#) [NEWS](#) [CONTACT](#)[Home](#) [OBD Landing Page](#)[Return to Search](#)

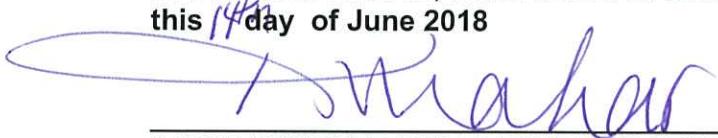
## ONTARIO BUILDER DIRECTORY: SEARCH RESULTS

**Location**

159 results

[Amherstburg \(2\)](#)  
[Burlington \(3\)](#)  
[Concord \(6\)](#)  
[Hamilton \(6\)](#)  
[Huntsville \(2\)](#)  
[London \(2\)](#)  
[Markham \(8\)](#)  
[Mississauga \(4\)](#)  
[North York \(4\)](#)  
[Oakville \(2\)](#)  
[Ottawa \(13\)](#)  
[Tillsonburg \(2\)](#)  
[Toronto \(57\)](#)  
[Vaughan \(5\)](#)  
[Woodbridge \(2\)](#)**Builder / Vendor Name**[Centurion Building Corporation](#)  
[Charlesfort Development Corporation](#)  
[Chions Construction Corporation](#)  
[Cobblestone Construction Corporation](#)  
[Concert Real Estate Corporation](#)**Umbrella Group**[Pinewood Group](#)  
[Charlesfort](#)**Location**[NIAGARA ON THE LAKE](#)**Registration #**[43908](#)**Registration Status**[Registered](#)**Registration Status**[Registered \(159\)](#)**Corebridge Construction Corporation**[Corebridge](#)**MARKHAM**[45542](#)[Registered](#)**Home Type**[Condo \(31\)](#)  
[Freehold \(105\)](#)**Crolla Development Corporation**[Crystal Homes \(Cambridge\) Corporation](#)**OTTAWA**[35375](#)[Registered](#)**Crystal Homes (Oakville) Corporation**[Crystal Homes](#)**HAMILTON**[32547](#)[Registered](#)**Crystal Homes Corporation**[Crystal Homes](#)**HAMILTON**[16743](#)[Registered](#)

This is Exhibit "W" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVIT

## Mahar, Kyla

---

**From:** Jennifer Xu <Jennifer.Xu@jddevelopment.ca>  
**Sent:** Wednesday, January 15, 2014 1:01 AM  
**To:** Xiaofan Zhang (zhangxf@mail.cmecc.com)  
**Cc:** Julia Zhang; Gary Xu (hai.xuu@gmail.com); Maggie Liu; Jiantao Shi (shijt@mail.cmecc.com)  
**Subject:** JD / CMEC +CED  
**Attachments:** calculation.xlsx

Hi, Xiaofan,

As discussed earlier, I'm summarizing as follows.

1. Subcontract we were discussing will be between CED and MBBC.
  - a) Sub-contract value: \$61,380,124
  - b) Deposit CED to MBBC: \$5,861,900 (this is after deduction of SINOSURE's premium of \$2,168,100 from deposit of \$8.03 Mil JD sent )
  - c) Total progress payments (excluding deposit) : \$55,518,224.
  - d) Total Advance amount (including calculation of deposits): \$53,350,124.
  - e) \$7,634,668 will be deducted from \$80,300,000 based on the latest discussion. So the contract value between JD and CMEC will be revised from \$80.3 Mil to \$72,665,332 with supplementary agreement.
  - f) Item 'e' reflects the latest discussions: SINOSURE - \$2,168,100 and interests on Cash Flow - \$4,117,108 and CMEC fee at \$5,000,000.
  - g) There are a number of concerns we have on Subcontract and Contract Condition.
    - o Billing / Invoicing: The contract is based on progress. However our agreement is based on latest Cash Flow provided. This need be amended to reflect.
    - o There is a section talking about ' Construction By Others'. This section need be amended completely.
    - o Deposit amount will not use 10%, but use the agreed amount of \$5,861,900.
    - o There is a clause ' do not allow extension'. We don't think this is necessary. As there will be areas talking about no increase from the agreed advance amounts or any other situations, the master contract amount between JD and CMEC will be revised as \$72.67Mil.
    - o The contract duration will be changed to 20 months.
2. We think there are a number of agreements and/or side agreements will be required. They are:
  - a) Financing Agreement between CMEC and JD to reflect loan value and repay amount.
  - b) Project Management Agreement between JD and CED
  - c) Project Management Agreement between CED and MBBC
  - d) Supplementary Agreement to revise master Contract Value
  - e) Item a & b are to split current master contract into 2 separate agreements. It is primary for Tax purpose.

3. A number of contracts currently executed under JD Phillip Street will need to be assigned to MBBC.
4. HST situation – JD to investigate HST since MBBC will require to issue invoices to CED on the regular basis.
5. MB is requesting confirmation of having financing in place for Phillip Building A before they will be fully mobilizing to start. The intent is to utilize Financing Agreement to MB. Alternative CMEC can provide letter or other document to help satisfy the requirements.

Xiaofan, we will connect in the night (your time) to discuss the subcontract.

Regards,

*Jennifer Xu, PMP<sup>1</sup>, LEED AP BD+C*  
Project Director



*3601 Highway 7 E, Suite 610*

*Markham, Ontario, L3R 0M3*

*Tel: 905-479-9898 Ext: 229*

*Fax: 905-479-9890*

**Cell: 647-824-5698**

**jennifer.xu@jddevelopment.ca**

**From:** Zhang Xiaofan [mailto:[zhangxf@mail.cmecc.com](mailto:zhangxf@mail.cmecc.com)]

**Sent:** January-14-14 10:50 PM

**To:** Jennifer Xu

**Subject:** Re: CED/MBBC

Zhang Xiaofan

**From:** Jennifer Xu

**Date:** 2014-01-15 11:46

**To:** Xiaofan Zhang ([zhangxf@mail.cmecc.com](mailto:zhangxf@mail.cmecc.com))

**Subject:** CED/MBBC

Subcontract between CMEC & MBBC

1

14-Jan

5,861,900

Down payment to MBBC

5,861,900

6

14-May

25,041,081

7

14-Jun

4,977,143

8

14-Jul

3,500,000

9

14-Aug

1,000,000

10

14-Sep

1,500,000

11

14-Oct

2,000,000

12

14-Nov

3,000,000

13

14-Dec

2,500,000

14

15-Jan

2,000,000

15

15-Feb

3,000,000

16

15-Mar

3,000,000

17

15-Apr

4,000,000

Total advance (not correct)

55,518,224

Total Subcontract value\*

61,380,124

Total Actual Advance

53,350,124

Jennifer Xu, PMP(r), LEED (r) AP BD+C  
Project Director

[cid:image001.png@01CF117A.7E1F0C40]

3601 Highway 7 E, Suite 610  
Markham, Ontario, L3R 0M3  
Tel: 905-479-9898 Ext: 229  
Fax: 905-479-9890  
Cell: 647-824-5698  
Jennifer.xu@jddevelopment.ca<mailto:Jennifer.xu@jddevelopment.ca>

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**Subcontract between CMEC & MBBC**

1	14-Jan	5,861,900
<b>Down payment to MBBC</b>		
6	14-May	25,041,081
7	14-Jun	4,977,143
8	14-Jul	3,500,000
9	14-Aug	1,000,000
10	14-Sep	1,500,000
11	14-Oct	2,000,000
12	14-Nov	3,000,000
13	14-Dec	2,500,000
14	15-Jan	2,000,000
15	15-Feb	3,000,000
16	15-Mar	3,000,000
17	15-Apr	4,000,000
<b>Total progress payment</b>		<b>55,518,224</b>
<b>Total Subcontract value*</b>		<b>61,380,124</b>

**Interest**

months	amount
24	2,153,533
23	410,200
22	275,917
21	75,250
20	107,500
19	136,167
18	193,500
17	152,292
16	114,667
15	161,250
14	150,500
13	186,333
<b>Total</b>	<b>4,117,108</b>

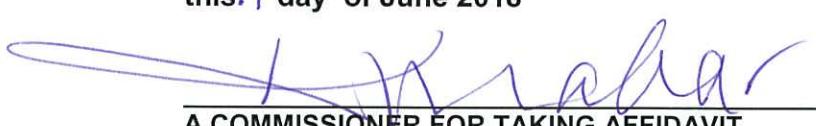
**Cost analysis**

<b>Master Contract</b>	
1 total contract value	80,300,000
2 downpayment	8,030,000
3 financed value	72,270,000
<b>Cost</b>	
4 SINOSURE	2,168,100
5 Interest (4.3% annually)	4,117,108
6 Construction (MBBC)	61,380,124
7 Pay back/deduct*	7,634,668
Sub-total - cost	75,300,000

CMEC FEE		5,000,000	
		6.23%	

\*Total subcontract value is subject to actual cash flow, \$5.6mio could be paid to MBCC or directly deduct from the master contract during payback period.

This is Exhibit "X" referred to in the affidavit  
of YUEQING ZHANG, SWORN BEFORE ME  
this 14<sup>th</sup> day of June 2018

  
A COMMISSIONER FOR TAKING AFFIDAVIT

## Mahar, Kyla

---

**From:** Zhang Xiaofan <zhangxf@mail.cmecc.com>  
**Sent:** Tuesday, October 14, 2014 3:38 AM  
**To:** Julia Zhang; Maggie Liu  
**Subject:** Re: RE: Project Management Agreement

Hi, Julia,

I understand the situation and I think it is better we have a con call to discuss this issue. We will try our best to go through this.

Best,  
Zhang Xiaofan

**From:** Julia Zhang  
**Date:** 2014-10-11 05:10  
**To:** Zhang Xiaofan; Maggie Liu  
**Subject:** RE: Project Management Agreement  
Xiao Fan,

If we present it to our accounting firm, it will trigger the HST issue for now.  
So please make sure that the corporation will be registered as soon as possible so we can present it for auditing purpose.  
Thank you.

Regards,

*Julia Y. Zhang*  
Director



3601 Highway 7 E, Suite 610  
Markham, Ontario, L3R 0M3  
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Fax: 905-479-9890  
Cell: 647-339-5284

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**From:** Zhang Xiaofan [mailto:[zhangxf@mail.cmecc.com](mailto:zhangxf@mail.cmecc.com)]  
**Sent:** October-09-14 11:48 PM  
**To:** Maggie Liu  
**Cc:** Julia Zhang  
**Subject:** Re: Project Management Agreement

Hi, Maggie,

We notice this, and we suggest to do it together with JD. We do need some planning.

Thanks a lot!

Zhang Xiaofan

**From:** Maggie Liu  
**Date:** 2014-10-10 05:21  
**To:** Zhang Xiaofan  
**CC:** Julia Zhang  
**Subject:** Project Managment Agreement  
Hi Xiaofan,

Our accounting firm is requesting the project management agreements (MBBC-CED Canada, JD Philip-CED Canada) for our yearend. Please help settle it ASAP. Otherwise, it might cause more problems.

Thanks,

Maggie Liu, CGA



*3601 Highway 7 E, Suite 610  
Markham, ON L3R 0M3*

*Tel: 905-479-9898 / 905-479-9833 ext 223  
Fax: 905-479-9890*

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CHINA MACHINERY  
ENGINEERING CORPORATION

v. 2284649 ONTARIO INC., et. al.

Court File No.: CV-18-591534-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**AFFIDAVIT OF YUEQING ZHANG**  
**(Sworn June 14, 2018)**  
**VOLUME 1 OF 3**

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Lawyers for the Respondents, 2284649 Ontario Inc.,  
2270613 Limited Partnership and 2270613 Ontario Inc.